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PUBLIC HEALTH LAW

A MANUAL OF LAW FOR SANITARIANS

PUBLIC HEALTH LAW

A MANUAL OF LAW FOR SANITARIANS

BY

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WITH A FOREWORD

BY

CHARLES V. CHAPIN, M.D., Sc.D.

BALTIMORE
THE WILLIAMS & WILKINS COMPANY
1926

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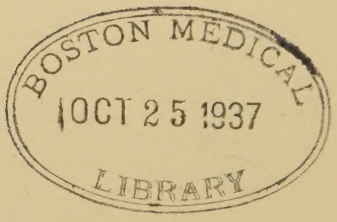
Made in United States of America

Published January, 1926

31884 Hist. 1 35



Composed and Printed at the
WAVERLY PRESS
for
The Williams & Wilkins Company
Baltimore, Md., U. S. A.

TO
PROFESSOR WILLIAM T. SEDGWICK
(1855–1921)
AND
JUDGE FENTON W. BOOTH
TWO OF THE GREAT TEACHERS AND INSPIRERS
OF MEN OF THIS GENERATION

THIS BOOK IS DEDICATED BY
A PUPIL

PREFACE

The intention of this book is to present to sanitarians and others interested, practical information on the legal phases of public health, information which it is to their advantage to have, and which can be found assembled in no other place. The book is not only an attempt to state concisely the fundamental legal principles applicable to public health procedure, but also to serve as a guide along these lines to health officials, and to point out where the law may be found, which in a subject of such wide scope, is of considerable significance. By no means is the book intended as a substitute for an attorney, any more than a volume on a medical subject can take the place of a physician. While designed especially for health workers, it may likewise prove of value to jurists, lawyers, government officials, physicians, sociologists, students, and others who may be called upon to delve into the administration of sanitary science.

Many of the author's teachers, superiors, colleagues, and friends have been good enough to read and criticize parts of the manuscript. They have made many valuable suggestions, but the author assumes all responsibility for any shortcomings or errors in form or substance which may exist. Acknowledgments are due and gratefully given to the following eminent sanitarians and distinguished lawyers who have read various portions of the manuscript: Mr. J. E. Bauman, Mr. H. N. Calver, Dr. S. J. Crumbine, Miss E. M. Furbush, Dr. F. J. Goodnow, Dr. T. H. Haines, Prof. I. V. Hiscock, Dean C. V. Imlay, Mr. C. A. Miller, Mr. H. H. Moore, Dr. G. T. Palmer, Dr. W. S. Rankin, Dr. M. P. Ravenel, Dr. F. E. Williams, Mr. W. F. Willoughby, Prof. C.-E. A. Winslow, Dr. W. C. Woodward, and Mr. G. E. Worthington. Dr. M. P. Ravenel has been particularly

helpful in making editorial corrections in the first and last chapters. Dr. C. V. Chapin and Mr. Abel Wolman have read the entire manuscript. Finally, the author's thanks are due to his wife for much devoted assistance.

JAMES A. TOBEY.

New York, August, 1925

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FOREWORD

The author has done well to begin by again quoting the oft quoted aphorism of the Earl of Derby that "sanitary instruction is even more important than sanitary legislation." Sanitarians work toward the ideal that all people will in time know what heathful living is, and that they will in time reach that moral plane when they will practice what they know. While hopeful for the millennium we must work. Law is still necessary. People still incline to acts which are not for their neighbors' good. In our complicated civilization, many restrictions must be placed on individual conduct in order that we may live happily and healthfully one with another. It is a common pastime to decry legislation. Many wittily declare that the most pressing duty of Congress and our state legislatures is to adjourn. Some of us differ decidedly from this view. Every one condemns unnecessary legislation and equally abhors ill considered and badly framed laws, but the relations of human beings are becoming more complex every day. It would appear that the rules governing these relations must become more complex. There is no doubt, too, that those who "on general principles" condemn "meddling legislation," when it comes to specific problems affecting themselves, are in favor of rat proofing plague infected cities, of stamping out virulent smallpox by drastic measures, of compelling one city to cease discharging its sewage into its neighbor's drinking water and of dealing summarily with him who peddles tuberculosis with his milk. Doubtless sanitary instruction will increase by leaps and bounds, but doubtless there will also be in the near future more, rather than fewer, sanitary laws.

Practically every one who enters the field of public health

with enthusiasm, whether it be a health officer, a voluntary worker, or just a plain citizen, stimulated by some evil, or abuse, first turns to legislation as a means of hastening the millennium. Few health officers entering upon their work know much about law, or even about the structure of our government. The propagandists of great health movements are likely to know even less. They may fear that human nature may interfere somewhat with law enforcement, but they little realize the legal impediments in the way of securing the prompt adoption of their rules. It never occurs to them that the Federal constitution may be in their way, or their state constitution, or some existing statute, or possibly a municipal ordinance. Still less do they realize the power of the courts. A judicial decision may possibly render void any law, or regulation. The author in a simple but concise manner thoroughly acquaints his reader with all these limitations to law making and rule making. Legislation is a serious business, and those interested in public health who expect to take a hand in it, and all who have to interpret and apply laws and regulations, need a volume on the desk which will guide them aright.

Of equal importance with an understanding of the principles of good sanitary legislation and its limitations is a knowledge of the technical construction of statutes and regulations. Mr. Tobey suggests that sanitary regulations should first be drawn by an expert in sanitary science, read and corrected by a master of English, and then be put into legal form and made to conform to constitutional and statutory requirements by a lawyer experienced in drafting legislation. It would be ideal if the three could have a joint meeting to complete the work. The necessity for the greatest care in this business cannot be too strongly insisted on. As Elihu Root said, quoted by Mr. Tobey, "There is a useless law suit in every useless word of a statute." Amendments are unfortunate and perhaps are best prevented by prior consultation with possibly adverse interests.

The last sentence of Chapter XIII is pregnant with meaning. The admonition is that regulations should not be adopted unless it is intended that they be enforced. The sole purpose of law is to control individual action so that it will not injure another. Nevertheless, it is surprising that there are so many people who believe that education is a legitimate function of legislation. Health teachers, health officers, social workers and even a professor of sociology in a leading university, have argued that though it might be impossible to enforce a proposed statute, it should be made a law for its educational effect. Nothing is more certain to develop disrespect for law than this, and disrespect for law is the most menacing danger of the times.

Chapter XIV is very useful and practical. Very few laymen have any knowledge of court procedure. When appointed health officer, I knew nothing about much matters, and if I could have read a brief discussion like this, it would have saved much misunderstanding and annoyance. The remarks about evidence and witnesses are particularly instructive and if taken to heart will save many disappointments.

A large portion of the book is taken up with the discussion of the legal problems connected with particular phases of health work, such as the control of communicable diseases, nuisances, social hygiene, mental hygiene, etc. A vast amount of information is contained therein which it is very useful for the health worker to have ready at hand.

Law and science are very unlike. It is unfortunate that the word law should be applied alike to the rules of conduct formulated by man, and the orderly procedure of the phenomena of Nature. The viewpoint and the modes of thought of the lawyer and of the scientist differ widely. As a student in the Massachusetts Institute of Technology and a pupil of Sedgwick, Mr. Tobey became imbued with true scientific spirit, as a student of and lecturer on law, he has become familiar with its principles and forms, and his

years of intimacy with the most important health movements of the day has filled him with an earnest desire for the prompt application of science to the furtherance of the public health. He is eminently qualified then to interpret in simple language to the health worker the principles of sanitary law.

CHARLES V. CHAPIN, M.D., Sc.D.,
Superintendent of Health, Providence, R. I.

February, 1925

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CHAPTER I

Introductory—Public Health and the Law

IMPORTANCE OF THE LEGAL SIDE OF PUBLIC HEALTH

The success of any effort for the protection of the public health depends upon a number of factors, not the least important of which is the existence of adequate sanitary legislation and a knowledge of the legal principles which underly public health problems. The modern health official, to be sure, should be a teacher and not a policeman, for it is undoubtedly true, as the Earl of Derby remarked, that "sanitary instruction is even more important than sanitary legislation." It is equally certain, nevertheless, that public health must have as an essential foundation, practical laws, which can be properly invoked when necessity arises. Education and moral persuasions will not, unfortunately, always bring about desired results, unless it is realized that behind them is the long arm of the law. The famous Roosevelt doctrine to "speak softly, but carry a big stick" is particularly applicable to public health work. The big stick in this case is the presence of scientific legislation, together with the ability to use it to best advantage.

The legal aspects of public health are, then, just as significant today as they have ever been. They have developed along with the evolution of public health itself and have now reached the point where they can be applied in a rational manner by those competent to put them into effective operation. Public health has, in its development, gone through three successive eras.[1] The first, beginning about one hundred years ago and lasting for some thirty or forty years, was a period of the suppression of disease and was based on the theory that sickness was caused by filth.

[1] Chapin, C. V.: The Evolution of Preventive Medicine, Journal of the American Medical Association, January 22, 1921. Vol. 76.

At this time, nuisances were considered the most important element of health work and the health official was indeed not much more than a policeman.

The second period in the evolution of modern public health began with the passage in England of the Public Health Act of 1879. Then followed in England and the United States a period of disease prevention. Using the remarkable foundation laid by the great French chemist, Louis Pasteur (1822–1895), who established the science of bacteriology, and with it the art of preventive medicine, sanitarians began to control the environment and regulate the movements of individuals when they affected the public health. Under the leadership of such inspiring teachers as the late Professor William T. Sedgwick of the Massachusetts Institute of Technology, this phase of sanitation was highly developed. The health officer was still somewhat a policeman, but less so. As Dr. Chapin says[2] "Thus far the promotion of public health has been largely a matter of compulsion. The state took away men's property and men's liberty. . . . . The rigorous enforcement of isolation took away man's most cherished right, his personal liberty. Police work is not pleasant work. It is slow work, and he who does it finds it difficult to obtain the good will of those whom he coerces."

The third period has only just begun. It is an era neither of the suppression of disease nor solely of its prevention, but of the promotion of positive health. This includes, obviously, prevention and control of the environment, but most of all, it is a matter of education of individuals in personal hygiene and the rules of right living. The time may come when the public will realize and apply, as unconscious habits, the principles of sanitary science, but that day is still far in the future. As Dr. Haven Emerson has so well phrased it[3] in speaking of the advance of public health,

[2] Same.

[3] Introduction to: Public Health in the United States, by H. H. Moore. Harper. (1923.)

"we know infinitely more than we use." When the sanitary millenium does arrive, there may be, perhaps, no need for health laws, nor their application. Until then, there is such a need. Adequate legislation and a knowledge of the legal aspects of public health are indeed indispensable to any sanitarian and especially those in administrative capacities.

WHAT IS MODERN PUBLIC HEALTH?

In order to orient ourselves at the outset, it is desirable to present definitions of public health, of law, and of public health law. Perhaps the best description of modern public health is that given by C.-E. A. Winslow, Dr. P. H., Professor of Public Health in the Yale School of Medicine. He writes:[4]

> Public health is the science and the art of preventing disease, prolonging life, and promoting physical health and efficiency through organized community efforts for the sanitation of the environment, the control of community infections, the education of the individual in principles of personal hygiene, the organization of medical and nursing service for the early diagnosis and preventive treatment of disease, and the development of the social machinery which will ensure to every individual a standard of living adequate for the maintenance of health; organizing these benefits in such fashion as to enable every citizen to realize his birthright of health and longevity.

He says of this definition, "Public health conceived in these terms will be something vastly different from the exercise of the purely police power which has been its principal manifestation in the past." The scope and ramifications of the modern science of public health are shown graphically in figure 1.[5]

This statement by Winslow is that of a leading sanitarian. If we look for remarks by lawyers and jurists we find

[4] Winslow, C-E. A.: The Untilled Fields of Public Health. Published by the New York County Chapter of the American Red Cross (1920) Also in Science, N. S., Vol. 51, p. 23; and Modern Medicine, vol. 2, p. 183.

[5] Illustration to article: Some of the Engineering Aspects of Public Health, by J. A. Tobey. Engineering News Record, April 21, 1921.

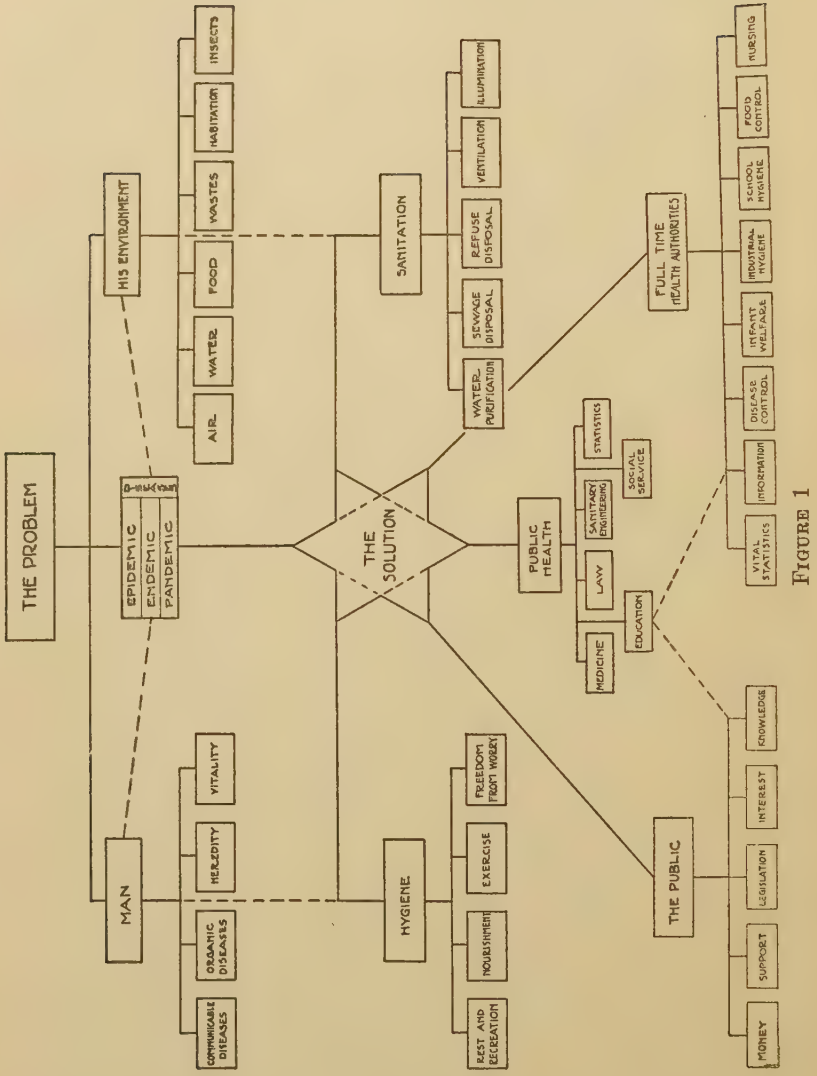
THE PROBLEM
MAN
HIS ENVIRONMENT
EPIDEMIC
ENDEMIC
PANDEMIC
AIR
WATER
FOOD
WASTES
HABITATION
INSECTS
ORGANIC DISEASES
HEREDITY
VITALITY
COMMUNICABLE DISEASES
THE SOLUTION
HYGIENE
EXERCISE
FREEDOM FROM WORRY
NOURISHMENT
REST AND RECREATION
SANITATION
WATER PURIFICATION
SEWAGE DISPOSAL
REFUSE DISPOSAL
VENTILATION
ILLUMINATION
PUBLIC HEALTH
LAW
MEDICINE
EDUCATION
SANITARY ENGINEERING
STATISTICS
SOCIAL SERVICE
THE PUBLIC
KNOWLEDGE
INTEREST
LEGISLATION
SUPPORT
MONEY
FULL TIME HEALTH AUTHORITIES
VITAL STATISTICS
INFORMATION
DISEASE CONTROL
INFANT WELFARE
INDUSTRIAL HYGIENE
SCHOOL HYGIENE
FOOD CONTROL
NURSING

FIGURE 1

equally imposing descriptions of public health. Mr. Justice Thompson of the Illinois Supreme Court wrote as follows in a decision[6] handed down in 1922:

> The health of the people is unquestionably an economic asset and social blessing, and the science of public health is therefore of great importance. Public health measures have long been recognized and used, but the science of public health is of recent origin, and with the advance of the science, methods have greatly altered. . . . . Among all the objects sought to be secured by governmental laws none is more important than the preservation of public health.

Mr. Justice Harlan, in delivering an opinion for the United States Supreme Court said,[7] ". . . . it is the settled doctrine of this court that, as government is organized for the purpose, among others, of preserving the public health and public morals, it cannot divest itself of the power to provide for these objects. . . . ."

One of the leading law dictionaries[8] has the following to say of public health: "As one of the objects of the police power of the state, the 'public health' means the prevailingly healthful or sanitary condition of the general body of people or the community in mass, and the absence of any general or widespread disease or cause of mortality." A prominent encyclopedia of law[9] contains these significant words, paraphrased from court decisions, "Health being the sine qua non of all personal enjoyment it is not only the right but the duty of the state or municipality possessing the police power to pass such laws or ordinances as may be necessary for the preservation of the health of the people." Finally, Blackstone, that great sage of the law, may be quoted,[10]

[6] People ex rel Barmore v. Robertson (1922), 302 Ill. 422, 134 N. E. 815, 22 A. L. R. 835.

[7] Powell v. Pennsylvania (1888), 127 U. S. 678; 8 S. Ct. 992, 1257; 32 L. Ed. 253. And see Holden v. Hardy (1898), 169 U. S. 366, 18 S. Ct. 383, 42 L. Ed. 780.

[8] Black's Law Dictionary.

[9] 12 Corpus Juris 913.

[10] 1 Blackstone's Commentaries 129.

"The right to the enjoyment of health is a subdivision of the right of personal security, one of the absolute rights of persons."

WHAT IS LAW?

Law has been defined[11] as "the binding custom or practice of a community; rules or mode of conduct made obligatory by some sanction which is imposed and enforced for their violation by a controlling authority." In his book, "The State," the late Woodrow Wilson offered this admirable sentence, "Law is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government."

Law is a broad term and in its widest sense refers to the whole mode of existence. That part of it which pertains to relationships among men and the efforts of society for its own protection and guidance is known as Municipal Law, which, of course, does not mean the law of municipalities, as we know them, but is a broader, more inclusive term, just as the word "State" is often used for sovereignty, rather than for a State of the United States. "Municipal Law is a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." This definition is Blackstone's, though the idea had been announced by Cicero and was repeated by Justinian.

WHAT IS PUBLIC HEALTH LAW?

Having presented general outlines of the scope of public health, and of law, it is now possible to suggest a definition for public health law. This should not be confused with medical jurisprudence, which is concerned only in the legal aspects of the application of medical and surgical knowledge to individuals. As has been brought out, public

[11] Webster's Dictionary.

health is not a branch of medicine, but a science in itself, to which, however, preventive medicine is an important contributor.

Public health law is that branch of jurisprudence which treats of the application of common and statutory law to the principles of hygiene and sanitary science.

SOME FUNDAMENTAL LEGAL PRINCIPLES[12]

The present system of law, the rules of civil conduct, of the United States, is based on the common law of England with some American modifications. In fact, the English common law is widely used throughout the world, dividing the honors with a system of jurisprudence which has descended from the Roman Civil Law, and which is in vogue in countries which came under the Latin influence, such as France and Italy. Even in our own country, the Roman law survives to some extent in those portions of the nation which were ceded by France and Spain, such as Louisiana and New Mexico. The English common law has grown up from early periods, its evolution dating from about 600 A.D. It is based on custom and the precedents of many years standing and experience. The American colonies brought with them the English law as it existed at the end of the seventeenth century and have retained it as a foundation ever since.

Law may be divided into several classes, about which it is desirable for the person not legally trained to have some conception. In the first place, law may be said to be written or unwritten. Obviously, in the former category are written constitutions and statutes. The unwritten law bulks much larger, however, and comprises all of the common law. In this class come the decisions of courts, which are nowadays written, to be sure, but nevertheless, as precedents, but unlike statutes, are included in that great mass of what is called the unwritten law. The way in which these two

[12] Stone, Harlan F.: Law and Its Administration (1915).

kinds of law, written and unwritten, are used, will be further explained and clarified in the next chapter. The law is, therefore, made both by the legislatures and the courts. When there is no legislation on a subject, the common law rules are in force. Even where there is legislation, the principles of the common law often help to explain or supplement the written law.

The Law can be further classified as Public or Private. Public law is, naturally, that section with which the State, or the people as a whole are concerned. It includes such subjects as: (*a*) international law, the law which governs the relations of nations; (*b*) constitutional law, the fundamental law of a state (or nation) which contains the principles on which government is founded, regulates the division of sovereign powers, and directs to what persons each of these powers is to be intrusted and the manner of its exercise; (*c*) criminal law, which deals with crimes and actions prejudicial to public welfare and contrary to public policy; and (*d*) administrative law, which is concerned with the manner of carrying on governmental affairs. Administrative law has been called the law of government in action, unlike constitutional law, which is the fundamental law underlying the formation and power of government.

Private law relates to the private conduct of individuals toward one another and is very wide in its scope. It deals with property, obligations and procedure. The laws of contracts, torts (wrongs), trusts, agency, partnership, private corporations, and real and personal property are some of the matters included herein.

Most of the law relating to public health comes under that division known as public law.

LAW AND EQUITY[13]

As the common law developed in England, there grew up with it a system known as chancery, or equity. Because

[13] See Pomeroy on Equity Jurisprudence (4th Ed. 1918).

the rules of the common law were so rigid, it occasionally happened that justice was not done in individual cases. The aggrieved person went, accordingly to the chancellor or "keeper of the king's conscience," who rendered an equitable decision. Thus, this system of equity evolved and eventually had its own court with a judge, though without a jury. It has been said that equity hovers over the law and can be invoked when the law by reason of its universality is deficient. Equity will not act where there is an adequate remedy at law, and to a considerable degree equity is preventive, rather than remediable.

Today the partition between law and equity in this country has in a measure been broken down. In many states the distinction has been entirely abolished or law and equity have been merged by legislative enactment. In New York, for instance, the State code has attempted to do away with the difference completely and all cases are adjudicated by only one set of courts, which, nevertheless, apply legal or equitable principles as called for by the case at hand. In some States, the court has its law and equity divisions. In a few states there are still separate courts of chancery, along side of the law courts.[14]

An example of the operation of law and equity will make the distinction more clear. If a factory is discharging the fumes of sulphuric acid to the detriment of the health of Mr. X., an adjoining property owner, this owner, being aggrieved, has a right of action against the factory. He may go into a court of law and sue the factory for damages. He may be granted a judgment entitling him to collect a sum of money. The factory pays the damages, but continues to discharge the fumes, thus, let us assume, continuing to jeopardize the health of Mr. X. and his family. He could sue again, but in the meantime his health might be permanently impaired. Obviously, the law gives an inadequate

[14] See also the descriptions of courts in chapter xiv on Law Enforcement, page 206.

remedy, as the granting of damages is as far as it will go. So, Mr. X. goes to a court of equity and gets an injunction to prevent the factory from discharging any more of the sulphurous fumes. This prevents the nuisance and allows him to live in comfort with his health unimpaired from that particular source.

LAW AND REASON

The whole of law is founded on the principle of justice and equity. For every wrong to an individual or to the State, there is a remedy. The essence of the law is reason, for as Lord Coke said, "Reason is the life of the law; nay, the common law itself is nothing else but reason." In spite of some shortcomings, as, for instance, the frequent delays, the concededly disgraceful administration of criminal law in this country at present, and the application of the jury system to technical scientific subjects, the methods of jurisprudence in vogue in this nation are the best there are. That they are actually founded on reason and justice is especially demonstrated as we study their application to the public health.

EARLY HEALTH LEGISLATION

Statutes affecting the public health were enacted in North America in the early days of the Colonies.[15] Virginia in 1639, Massachusetts in 1649, and New York and New Jersey in 1665 promulgated acts to regulate the practice of medicine. A vital statistics law was passed in Virginia in the seventeenth century (Act 24, February, 1631–2). The first sanitary legislation, according to Chapin,[16] was a maritime

[15] See Organization, Powers, and Duties of Health Authorities. Public Health Bulletin No. 54, (1912). U. S. Public Health Service, Washington, D. C.

[16] Chapin, C. V.: History of State and Municipal Control of Disease, in A Half Century of Public Health (1921). American Public Health Association, New York. Also Chapin, C. V.: Municipal Sanitation in the United States, (1901) Snow and Farnham. A more complete description of early health legislation is given in the author's book "The National Government and Public Health" (In press, 1925.)

quarantine act in Massachusetts passed in 1648, due to the prevalence of disease in the West Indies. Owing to the cessation of the epidemic, it was repealed in the following year. Another quarantine act was passed by this colony in 1669, but on account of its stringency was disallowed by the Privy Council. An act to prevent the pollution of Boston Harbor went into effect in 1647. Boston and Salem adopted regulations to control smallpox in 1678, while Massachusetts passed an act in 1701 which provided for the "impressment" of houses to which patients might be removed. In 1721 Rhode Island required notification of smallpox by keepers of houses of entertainment, though reports by physicians were not demanded by any of the colonies or towns for many years. In 1797 Massachusetts put into operation a law providing for health organizations in towns and giving to these boards power to make regulations; this law was soon copied more or less throughout the country. A federal law of 1796[17] authorized the president to direct revenue officers to aid in the execution of quarantine and also to assist states in the execution of their health laws.

The first local health board was organized in Baltimore in 1793. Philadelphia followed in 1794, Newburyport, Mass., in 1797, and New York and Boston in 1799. From 1800 on many local boards were formed, a complete list of them with dates of organization being given in one of the publications of the United States Public Health Service.[18] Louisiana was the first State to create a State board of health having done so in 1855, though supreme boards of health had been in existence in Porto Rico (1768) and Hawaii (1851) before they were annexed. The District of Columbia had such a board as early as 1822. Massachusetts was the second State to organize its State board in 1869 and was followed by California the next year. The Massachusetts board was really the first of general scope and, except for

[17] 1 Stat. 474.

[18] Same as (15) above.

change of name, and other developments, has been in continuous existence since.

A national board of health was established by Congress by the act of March 3, 1879,[19] which was supplemented by a temporary act in 1879, which was to remain in force for four years. In 1882 the duties of the board, which had originally been fairly broad,[20] were confined to the diseases cholera, smallpox, and yellow fever, and finally in 1893, after the board had been dormant for several years and without appropriations, the act creating it was repealed.[21] A federal marine hospital service had been established in the Treasury Department in 1798[22] and early in its career it was authorized by the president to aid State and local health authorities. The scope of this service was enlarged in 1878[23] and again from time to time in following years. By an act of 1890[24] this service was designated as the federal agency for the prevention of the interstate spread of disease; its name was changed to Public Health and Marine Hospital Service in 1902[25] and to the United States Public Health Service in 1912.[26] It is today (1925) the chief federal agency concerned with public health, although there are others (see page 25).

Today every State has numerous health laws on its statute books and many of these will be considered later in connection with various subjects. If all the health laws

[19] 20 Stat. 484. 21 Stat. 5.

[20] See Laws and Comptroller's Decisions Pertaining to the United States Public Health Service. Supplement No. 41 (1922), U. S. Public Health Service, Washington, D. C. Also Dunwoody v. U. S. (1891), 143 U. S. 578; 36 L. Ed. 269.

[21] 27 Stat. L. 449.

[22] 1 Stat L. 605.

[23] 20 Stat. L. 37.

[24] 26 Stat. L. 31.

[25] 32 Stat. L. 728.

[26] 37 Stat. L. 519.

See also the United States Public Health Service: Its Evolution and Organization. Reprint No. 661 (1921). U. S. Public Health Service, Washington, D. C.

were gathered together it would require a volume of several thousand pages. Those of Massachusetts alone fill a pamphlet of 360 pages. Even so, however, all of these various State health laws by no means adequately cover all phases of public health, so that recourse must frequently be had to the doctrines of the common law.

CHAPTER II

The Sources of Public Health Law

SOURCE OF LAW IN THE UNITED STATES

In order to understand the source of the law, both statutory and common, which relates to public health in this country, it is necessary to have a clear conception of our system of government and the manner in which it operates. The chief feature of our government is the fact that it is based on definite written constitutions, Federal on the one hand, and State on the other, which have been promulgated by the people themselves and can be altered only by them. In England there is no written constitution and Parliament may change any law at will.

When we wish to ascertain what is the law in this country, we go to the following authorities, which are given in their order of relative importance:

a. The Federal Constitution
b. Treaties and Acts of Congress
c. State Constitutions
d. State Legislation
e. Municipal Ordinances and Regulations
f. The Common Law[1]

The government of the United States is, as every citizen knows, a Federal government. The Federal authority is, within constitutional limitations, supreme over State authority, but the Federal government can exercise only those powers expressed or clearly implied by the Constitution. In other words, the Federal Constitution is a grant of power to the Federal government and once action has been taken

[1] The common law is, of course, fundamental and supplementary in connection with all of the above sources and may be used to explain or interpret written legislation.

under it, such action is absolutely binding on all the States and all citizens, even though there should be State legislation to the contrary. No State constitution or State law can, as a matter of fact, contravene the Federal Constitution.

THE AMERICAN PLAN OF GOVERNMENT

A leading feature of our system of government is what is known as the separation of powers. Great statesmen have long held that to attain true democracy, a different set of men must enforce and interpret the laws than those who make them. When the power of making and enforcing legislation is vested in one individual or a single group of individuals, tyranny may result. As a consequence, the framers of our constitution provided for a triple system of government, consisting of the executive, legislative, and judicial branches. Each of these has separate and distinct functions and each exerts a check on the other. It is, broadly speaking, the duty of the legislative branch to ascertain what laws are needed and pass them, of the executive to put these laws into operation and enforce them, and of the judiciary to interpret the laws and apply them so that justice is done in individual cases brought before the courts for adjudication. There is, of course, some overlapping of functions, but the separation of powers has achieved greater perfection in this country than in any other. The same system has been set up in each of the States by their own constitutions.[2]

It is not our purpose to go into this theory of government in great detail, as that is beyond the scope of this work and will be found described in many authoritative books.[2a] A few concise observations may, however, be worth while.

[2] See Goodnow on Administrative Law (1905) and Short, L. M.: The Development of National Administrative Organization in the United States. (1923) Institute for Government Research, Washington, D. C.

[2a] One of the best and most interesting works on this subject is: Introduction to American Government, by F. A. Ogg and P. O. Ray. (2nd ed. 1925). Century.

THE EXECUTIVE

The President represents the executive branch of the Federal government. He has a cabinet, the members of which are each at the head of an executive department, such, for instance, as the Secretary of State. Federal public health work is carried on by several of these departments.[3] There are also a number of independent establishments directly under the supervision of the President. An example in 1925 was the United States Veterans' Bureau.

The chief executive in a State is the governor. He appoints many subordinate officers, though frequently with the advice and consent of the upper branch of the legislature. State health departments belong to the executive branch of government. Although some authorities on government assert that a single executive is the most efficient method of carrying out the duties of the executive division of government,[4] health work, both State and municipal, is today largely vested in boards. A few States, such as New York, Massachusetts, and Pennsylvania have commissioners of health to whom are delegated ministerial powers over State health activities, with the advice only of an advisory council. In nearly all of the other States there is a board.[5]

THE LEGISLATURE

In every State and the Federal government, the legislative branch consists of two parts, which may be designated as the upper and lower chambers. The Federal Constitution provides for a senate and a house of representatives, members of each of which are elected by the people of the respective states. Theoretically, the senate represents the States and the house the people. There are likewise two houses in each of the State legislatures, a senate and a lower

[3] See below, page 25.

[4] See Story on the Constitution (5th Ed. 1891).

[5] See annual directories of state health officials, issued by the United States Public Health Service, Washington, D. C.

body variously called the house of representatives, assembly, house of delegates, or by some other appellation. The members of both houses are chosen by popular vote. It is the legislature which has the duty of prescribing health laws for the State. After laying down such legislation, the power to carry it out, with a considerable amount of discretion, may be delegated to suitable executive officers, as the State health commissioners, and also to local boards of health. These functions will be described more in detail in subsequent chapters.

THE JUDICIARY

The only court expressly provided for in the Federal Constitution is the United States Supreme Court, but Congress is given the power to establish such inferior federal courts as may be necessary, and this it has done. State constitutions likewise provide for creation of the State courts. The whole matter of courts and court procedure is discussed in Chapter XIV.

THE FEDERAL CONSTITUTION

The Constitution of the United States has been aptly called one of the greatest documents ever produced by the hand of man. It is one with which every American citizen should be familiar. During a lecture on public health law, inquiry by the author disclosed the fact that not one of the students present, including health officers, physicians, public health nurses, and other sanitarians, had ever read the Constitution. Since this remarkable organic law should be especially well known to health officials, it is given entire as an appendix to this book.[6]

The Federal Constitution which superseded the Articles of Confederation, was finally adopted in March, 1789, more than a decade after the colonies had declared their

[6] See Appendix I, page 240.

independence. Amendments have been adopted from time to time, numbering nineteen in 1925, while a twentieth dealing with child labor was being submitted to the States for ratification in that year. As previously stated, the Constitution enumerates the powers which the Federal government shall have, all powers not so granted being reserved to the States or to the people. Nowhere will be found anything in the Federal Constitution dealing directly with public health. As a matter of fact, control over the health of the people was a definite function of the States before the national consitution was adopted. The States never gave up this duty and retain it today as part of what is known as the police power.[7] The control of the public health is, therefore, primarily a State matter, but many of the clauses of the Federal Constitution affect the way in which this power may be exercised.

The Federal government itself does have certain public health functions, authority for which is derived from some of the general clauses of the Constitution. These may be taken up under four headings, including: (1) the power to legislate for the District of Columbia, the territories, and government reservations; (2) the power over interstate and foreign commerce; (3) the power of taxation; and (4) the treaty making power.[8]

Section 8 of Article 1 of the Constitution (see page 245, appendix I) gives to Congress the entire right to govern the District of Columbia, the territories of the United States, and the reservations ceded to the Federal government by the States. This power over the health of the residents of these areas is, therefore, complete, though subject to those constitutional limitations which comprise what is

[7] See Chapter III, page 31.

[8] For much of this discussion the author is indebted to two papers by President F. J. Goodnow of Johns Hopkins: Constitutional Foundations of Federal Public Health Functions. Reprint No. 559 (1919), U. S. Public Health Service; and Fundamental Legal Principles of Public Health Administration. National Conference of Social Work. Proceedings, 1923.

called the Bill of Rights. As an example of the operation of these constitutional limitations in behalf of individuals may be cited the recent decision of the United States Supreme Court in holding unconstitutional an act of Congress fixing a minimum wage for women in the District of Columbia.[9] The purpose of this law[10] was declared to be "to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living," but the court held the act to be an infringement of the Fifth Amendment to the Constitution, which requires of the Federal government, that no person be deprived of life, liberty, or property without due process of law. Interference with the right to contract to work for any wages desired was considered such deprivation. There were strong dissenting opinions by Chief Justice Taft and Justice Homes. This decision does not, apparently, affect the rights of the States to limit hours of labor (of women, at least) in the interests of public health.[11]

REGULATION OF INTERSTATE COMMERCE

The power of Congress to regulate commerce with foreign nations, and among the several States, and with Indian Tribes is well known (Article 1, Section 8). As an incident to this power, regulations in the interest of the public health may be passed. Congress has, for instance, passed a law, the Pure Food and Drugs Act,[12] prohibiting the transportation in interstate commerce of impure foods and drugs, an act which has been upheld by the Supreme Court.[13]

[9] Adkins v. The Children's Hospital of the District of Columbia (1923), 261 U. S. 525, 43 Sup. Ct. 394, 67 L. Ed. 785.

[10] 40 Stat. 960.

[11] Muller v. Oregon (1908), 208 U. S. 412, 28 Sup. Ct. 324, 52 L. Ed. 551, 13 Ann. Cas. 957.

Radice v. New York, 44 Sup. Ct. 325, 68 L. Ed. 690. N. Y. Law Journal, July 18, 1924.

[12] 34 Stat. 768 ff. as amended.

[13] Hipolite Egg Co. v. U. S. (1911), 220 U. S. 45, 31 S. Ct. 364, 55 L. Ed. 364.

More than 12,000 seizures and prosecutions based on adulteration under this act have been completed since its enactment in 1906, according to a press release of the Department of Agriculture in 1924. So, too, Congress has debarred "filled milk," that is, milk blended with fats other than milk fats, from such transportation; and it has provided for quarantine[14] and the regulation of interstate shipment of biological products.[15] Interstate commerce includes not only merchandise, but persons,[16] and the Supreme Court has upheld the right of Congress to enact legislation prohibiting transportation of women and girls for immoral purposes.[17]

Commerce[18] itself is not defined in the Constitution, nor is the word "regulate" as it is used. The meaning of these words have been expressed, however, by acts of Congress and adjudicated on numerous occasions by the Supreme Court. At the present time commerce as a subject of Congressional regulations includes both transportation by land and water and the instrumentalities of such transportation, that is, not only the act, but the routes and the persons or things who do the transporting. It embraces also the transactions, such as purchase and sales, which enter into trade of an interstate nature. Manufacturing or production may likewise be included under certain conditions.

Regulation[19] includes the powers to construct or provide by the chartering of companies for construction of the routes by land or water by which interstate or foreign commerce may be carried on. It includes regulation of the private

[14] See Laws and Comptroller's Decisions Pertaining to the United States Public Health Service Supplement No. 41 (1922), U. S. Public Health Service, Washington, D. C.

[15] 32 Stat. 728 ff.

[16] Passenger Cases (1849), 7 How. 283.

[17] Hoke v. U. S. (1913), 227 U. S. 308, 33 S. Ct. 281, 57 L. Ed. 523, Ann. Cas. 1913 E 905, 43 L. R. A. (N. S.) 906.

Caminetti v. U. S. (1917), 242 U. S. 470, 37 S. Ct. 192, 61 L. Ed. 442, Ann. Cas. 1917 B. 1168.

[18] See Calvert on Commerce (1907).

[19] See Cooke on Commerce (1908).

legal relations existing between persons engaged in such commerce. Finally, it embraces the power to prohibit or license commerce in certain articles and methods of operation. There are limitations to all this power, however, and Congress has no right to interfere with matters coming solely within the jurisdiction of the State. Thus, there can be no regulation of commerce within the borders of a particular State. Interstate commerce does not begin until the goods actually start on their journey and there can be no interference with action in the State which precedes this commerce. The attempt of Congress to do away with child labor in the States by forbidding the transportation in interstate commerce of articles made in factories where children under fourteen were employed was declared unconstitutional by the Supreme Court.[20] This opinion, rendered by a divided court, held that the act was an attempt to regulate a State matter, the admitted harm to health being due to the manufacture within the state and not to the transportation.

In discussing the child labor case, F. J. Goodnow says:[21]

> We must therefore conclude that the health powers of Congress to be derived from the commerce clause of the Constitution relate for the most part to the act of transportation as it has been defined by the decisions. Whether this will always be the rule is open to some question. For in other directions, of which decisions under the anti-trust act are examples, actions which related to manufacture rather than to transportation have been held to come under the regulating power of Congress. On the theory that they were prohibited by the Anti-Trust Act, combinations both of employers and employed with regard to manufacturing and sales within a State rather than transportation have been punished as illegal.

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[20] Hammer v. Dagenhart (1918), 247 U. S. 251, 38 S. Ct. 529, 62 L. Ed. 1101, Ann. Cas. 1918 E. 724, 3 A. L. R. 649. Reprinted in Child Labor Division Circular No. 2 of the U. S. Children's Bureau, Washington, D. C.

[21] Constitutional Foundations of Federal Public Health Functions. Reprint No. 559 (1919). U. S. Public Health Service, Washington, D. C.

THE TAXING POWER[22]

The Federal Constitution gives to Congress the power (Article 1, Section 8) "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States." It has been said, and truly, that the power to tax is the power to destroy. Congress may use this power, therefore, not only for raising revenue and promoting the common welfare, but also to regulate or even prohibit the use of deleterious substances. Thus, Congress has placed a prohibitive tax on the production of white phosphorus matches, which are dangerous to health.[23] An example of regulation is the Congressional act relative to the sale of drugs, the so-called Harrison Anti-narcotic law,[24] which has been upheld[25] by the Supreme Court. A law laying a tax on oleo-margarine when colored to resemble butter has likewise been sustained.[26] Under the taxing power and the power to appropriate, the Federal government has created numerous executive bureaus, such as the Public Health Service in the Treasury Department, the Children's Bureau in the Department of Labor, and others.

As in the case of commerce, there are limitations on the extent of the taxing power. Having failed to regulate child labor by means of the commerce clause, Congress enacted a law placing a prohibitive tax on persons who employed child labor in the States.[27] The United States Supreme Court ruled that this act was unconstitutional on the grounds that here again Congress had attempted to interfere with a State right.[28] The court said, "Although Congress does not

[22] See Cooley on Taxation (1924 edition).

[23] 37 Stat. 81 ff. This law has never been contested in the courts.

[24] 38 Stat. 785 ff, 40 Stat. 1130.

[25] U. S. v. Doremus (1918), 249 U. S. 86, 39 S. Ct. 214, 63 L. Ed. 493.

[26] McCray v. U. S. (1904), 195 U. S. 60, 24 S. Ct. 769, 49 L. Ed. 78, 1 Ann. Cas. 561.

[27] 40 Stat. 1057, 1138.

[28] Bailey v. Drexel Furniture Co. (1922), 259 U. S. 20, 42 S. Ct. 449, 66 L. Ed. 817, 21 A. L. R. 1432.

invalidate the contract of employment or expressly declare that the employment within the mentioned ages is illegal, it does exhibit its intent practically to achieve the latter result by adopting the criteria of wrongdoing and imposing its principal consequence on those who transgress its standard."

In making appropriations under the taxing power, Congress has of late years sometimes required that the States themselves appropriate sums of money in order to get the benefit of the law. Thus, in the Federal act for the Promotion of the Welfare and Hygiene of Maternity and Infancy,[29] popularly referred to as the "Sheppard-Towner Law," a million dollars is authorized to be appropriated annually to be apportioned equally to the States, provided each State to receive the grant must accept the provisions of the act, authorize a State agency to administer it, submit detailed plans to the Federal Maternity and Infancy Board, and appropriate an amount equal to the federal sum allotted to the State. The Commonwealth of Massachusetts and a citizen of that State endeavored to contest the act, but the United States Supreme Court held that neither the State of Massachusetts nor the taxpayer had a status in court which entitled either to bring a cause of action, and so dismissed the cases without actually passing on the constitutionality of the law.[30] In commenting on the Federal Maternity Act before the Supreme Court had passed upon it, Dr. Goodnow had this to say,[31] "Up to the time of the bringing of this action there was, I think, little doubt in the minds of lawyers as to the propriety of such

[29] 42 Stat. 224.

[30] Massachusetts v. Mellon (1923), 262 U.S. 447, 43 S. Ct. 597, 67 L. Ed. 1078.

[31] Fundamental Legal Principles of Public Health Administration. 1923 Proc. National Conference of Social Work. See also Tobey, J. A. Constitutionality of the Federal Maternity Act, Public Health Nurse, Sept. 1922. And Congressional Record for June 29, 1922; remarks by Hon. H. M. Towner.

methods, but it must be admitted that the decisions of the Supreme Court in the Child Labor cases show quite a marked tendency in the court as now constituted to preserve the independence of the States against encroachment upon the part of Congress." President Coolidge in messages to Congress in 1924 decried any extension of Federal aid to States.

TREATIES AND MISCELLANEOUS POWERS

Under the Constitution, the executive branch of our Federal government may make treaties, subject to ratification by the senate. Many such treaties have been made and several have pertained to public health, such as adherence to the International Sanitary Convention. Where supplementary legislation is needed to carry out a treaty, Congress may pass such laws, even though such subjects might not be within the scope of Congress, if it were not for the treaty.

The establishment of post offices and post roads is another power given to Congress by the Constitution. Under this authority Congress has passed laws prohibiting the use of the mails to promote frauds,[32] and also to prevent the mailing of obscene matter.[33] Included in the former category are schemes to treat various diseases, such as cancer, tuberculosis, drug addiction, and the venereal diseases. Misbranded or fraudulent foods, drugs, and patent medicines can also be dealt with under the postal laws, as well as under the Pure Food and Drugs Act. Where evidence as to fraud is discovered, the Postmaster General may issue a fraud order and enjoin the concern from receiving mail, all communications being marked "fraudulent" and returned to the sender. Hearings regarding these orders are conducted by the department, but the accused may, of course, have recourse to the courts. Action may also be brought

[32] 35 Stat. 1130.
[33] 35 Stat. 416, 1129; 36 Stat. 1139.

by the department in court when necessary.[34] When a person believes that a fraud against public health is being perpetrated through the mails, a report giving complete details should be made to the Chief Inspector, Post Office Department, Washington, D. C.[35]

The United States Patent Office, established to secure to inventors the exclusive right to their discoveries for a number of years, issues patents and registers trade marks. Under this authority, any drug or medicine which is invented may be registered or receive a patent and, as is well known, many such patents have been issued. Today trade marks for medicines are issued more often than are patents, however. There seems to be no scientific determination of the efficacy of these so-called "patent medicines" before the patent or trade mark is issued, about the only requirements being that the formula shall not have been previously patented within the statutory limit, or that the trade mark conflicts with no other already issued.

Copyright of books and writings is issued by the Registrar of Copyrights, after depositing in his office in the Library of Congress copies of the material and the payment of a small fee. Health books, articles, motion pictures, etc., may, of course, receive this benefit.

FEDERAL HEALTH AGENCIES

In each of the Federal executive departments there existed in 1925 one or more bureaus or other branches of the Government which were concerned directly or indirectly with some phase of national public health, and there were also many such bureaus under a number of the independent establishments whic hare in no cabinet department, but responsible

[34] See Kebler, L. F.: Public Health Conserved Through the Enforcement of Postal Fraud Laws. American Journal of Public Health, August, 1922, page 678. See also American School of Magnetic Healing v. McAnnulty (1902), 187 U. S. 94, 23 Sup. Ct. 33, 47 L. Ed. 90.

[35] U. S. Official Postal Guide (reissued frequently).

directly to the President. In only seven instances could public health work be considered a major activity of the bureau, however, in most other cases being subordinate or secondary to the general scope of the bureau. Many suggestions have been made for the coördination of these scattered activities and a determined, but unsuccessful effort was made in 1910 and again in 1912 to secure a department of public health with a secretary in the Cabinet. A study by the author of all Federal health activities was under way in 1925 and a book outlining the existing organizations and making suggestions for their correlation was being prepared for publication under the auspices of the Institute for Government Research of Washington, D. C.

Chief among the Federal health agencies is the United States Public Health Service.[36] Having evolved from the Marine Hospital Service, which was originally charged with the administration of medical relief to seamen, this bureau has since its creation in 1798 been in the Department of the Treasury, a most incongruous place for it, as the bureau has nothing to do with fiscal affairs. It has a personnel of about 4000, many of whom are employed on medical work and other duties which are not concerned directly with public health. Less than one-half of the annual appropriation of nearly ten million dollars goes into actual public health work. Also in the Treasury Department is the Bureau of Internal Revenue, which is charged, among other duties, with the enforcement of the Harrison Antinarcotic Act and the prohibition laws, for both of which over ten million dollars was appropriated in 1925.

Another important health agency of the Federal Government is the Children's Bureau[37] in the Department of Labor.

[36] Schmeckebier, L. F.: The Public Health Service, Monograph No. 10 (1923), Institute for Government Research, Washington, D. C.

The United States Public Health Service: Its Evolution and Organization, Reprint No. 661 (1921), U. S. Public Health Service, Washington, D. C. and annual reports of the Service.

[37] Tobey, J. A.: The Children's Bureau, Monograph No. 21 (1925), Institute for Government Research, Washington, D. C.

In addition to valuable activities for general child welfare and the investigation of infant mortality and child hygiene, this bureau was charged in 1921 with the administration of the Federal Maternity and Infancy Act,[38] popularly called the Sheppard-Towner Law. For this act about a million dollars is appropriated, to be allotted to the States accepting the law, and an additional $300,000 or so is granted to the bureau for its other activities. In the Department of Labor there is also the Women's Bureau,[39] interested in the health and welfare of women in industry; for all purposes of the bureau about $100,000 a year is appropriated. The Bureau of Labor Statistics[40] in this same department conducts studies on occupational diseases, and the Bureau of Immigration is charged with the administrative supervision over examinations of immigrants who enter this country, though the actual examining is performed according to law by the medical officers of the Public Health Service, part of the appropriation of which is for this purpose.

In the Interior Department are several bureaus engaged in health activities. The Office of Indian Affairs[41] has been getting $370,000 annually for a number of years, though the sum was doubled in 1925, for relieving distress and preventing disease among Indians, and for this purpose maintains a medical division. Fifty thousand dollars is allotted annually to the Bureau of Education for investigations of rural education, industrial education, and school hygiene and physical education, so that a division of school hygiene[42] is necessary. The Alaska Division of the Bureau of Education

[38] 42 Stat. 135. In force for five years.

[39] The Women's Bureau, Monograph No. 22 (1923), Institute for Government Research, Washington, D. C.

[40] Weber, G. A.: The Bureau of Labor Statistics (Bulletin No. 319, 1922), U. S. Bureau of Labor Statistics, Washington, D. C.

[41] Report of National Health Council (1922), New York.

[42] Tobey, J. A.: The Division of School Hygiene. School and Society, March 25, 1922.

has charge of the health of the natives of Alaska, in which duty it has the coöperation of the Public Health Service.

The Department of Agriculture seems likewise to be more or less replete with bureaus having a health interest. Much of the work of the Bureau of Animal Industry,[43] for instance, concerns human health. This bureau received in 1925 a total appropriation of nearly ten million dollars, of which three millions was for investigation of tuberculosis in animals, and about four million for inspection of meat intended for shipment in interstate commerce. The Bureau of Chemistry,[44] with an appropriation of $1,387,000 in 1925, conducts the analytical work under the Pure Food and Drugs act[45] and the Tea Act. The Bureau of Dairying is interested not only in the economic side of that industry, but also in the sanitary problems of it. The Bureau of Home Economics conducts with its appropriation of approximately $100,000 studies on nutrition; the Bureau of Entomology, among other things, investigates insects affecting the health of man and animals; while the Bureau of Public Roads has designed sanitary conveniences for farm homes.

The Division of Vital Statistics of the Bureau of the Census[46] in the Department of Commerce collects statistics on births and deaths throughout the country, promotes the registration areas, etc., with an appropriation of something less than $200,000. The Bureau of Mines, transferred from the Interior Department to the Department of Commerce in 1925, received $360,000 for investigations of mine safety, and $262,300 for the operation of mine rescue cars.[47] Among the independent establishments were the United States Veterans' Bureau, which supplies medical relief and vocational rehabilitation to ex-service men; and the United

[43] Houck, U. G.: The Bureau of Animal Industry (1924). Also Report of National Health Council (1922), New York.

[44] The Bureau of Chemistry, Department Circular 137 (Revised 1924).

[45] 34 Stat. 768 as amended.

[46] Report of the National Health Council (1922), New York.

[47] Same.

States Employees' Compensation Commission, which gives medical aid and compensation to injured civil employees of the Government, using for the former purpose the hospitals of the Public Health Service. There are a number of other bureaus which have miscellaneous interests in public health, though mostly of a minor character.[48]

STATE CONSTITUTIONS

The Federal Constitution, as previously explained, is an enumeration of the powers which have been granted to the national government. A State constitution is a grant of power by the people of the State to their government, setting forth the limitations which may be imposed upon the people. A State constitution is the supreme law of the State, subject, however, to the provisions of the Federal Constitution and to acts of Congress and treaties made by the national government. Provisions regarding the public health are seldom written into State constitutions, nor need they be, for, as will be explained more fully in the next chapter, the care of the public health is an inherent duty of sovereignty. Only a few States do mention public health in their constitutions.[49] Every health official, and for that matter, every citizen, should read the constitution of his own State, for it contains the fundamental law and the bill of rights which govern the inhabitants and their relations with one another and with the sovereign power, represented by the State government. Such matters may wield an indirect, but important influence on the public health by their application to the modes and procedures of local government and the regimen of the people.

[48] See Congressional Directories (issued for each session of Congress; giving information about the executive departments).

Tobey, J. A.: U. S. Government Health Activities, Nation's Health, April, 1922.

[49] Thorpe on Federal and State Constitutions (1909).

The States in which public health is mentioned in their Constitutions, according to the Index Digest of State Constitutions (Columbia University, 1915) are: Calif., Del., Fla., La., Okla., S. C., Tex., Wash., and Wyo.

STATE LAWS AND POLITICAL AGENCIES

Under the authority of the State Constitution, each State may pass such laws as are allowed by that instrument and which are not inconsistent with the Federal Constitution and the rights of the national government. Except for this limitation, the States of this nation are independent political organizations, supreme in all matters within their own jurisdictions. The supremacy of the national government over any State or agency thereof was brought out strikingly in a case decided in January, 1925, in which the United States Supreme Court granted an injunction restraining the Sanitary District of Chicago from taking an excessive amount of water from the Great Lakes for the purpose of disposing of its sewage. The city claimed to act under the authority of State law, though the lakes are navigable waters and under the federal jurisdiction of the Secretary of War who had refused to grant permission to the Sanitary District to withdraw the amount of water which they desired.[50]

Under the law-making power of the States, legislation affecting public health may be passed, but this privilege can not be delegated to any inferior board or political agency. The power to promulgate administrative rules, regulations, or ordinances to carry out State legislation may, however, be conferred upon State or local boards, or upon municipal corporations, all of which are the agents of the State and political subdivisions of it. Such ordinances or rules, properly passed, and consistent with State laws, have the force of law and are binding upon the citizens coming under their jurisdiction.[51]

[50] Sanitary District of Chicago v. United States (1925), 266 U. S. 405.

[51] 4 Dillon on Municipal Corporations, Sec. 1661 (5th Ed. 1911). See also Chapter V on Local Health Departments.

CHAPTER III

The Police Power and the Public Health

SOURCE OF THE POLICE POWER

"Salus populi suprema lex," or "the safety of the people is the supreme law," is an ancient Roman maxim. The power to protect the health and welfare of the people has always been considered an inherent right, and duty of any sovereignty. From time immemorial, health has been recognized by government as the thing without which life is not worth living; accordingly, the State has taken such measures as seemed wise to maintain and preserve the health of those subject to its authority.

Before the Constitution of the United States was adopted, the States possessed the power of health protection, and this was one matter which was not granted to the Federal Government. Furthermore, the Tenth Amendment to the Constitution specifically states that "the powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This clause includes all those matters which come under what is known as the "police power."

NATURE OF THE POLICE POWER

The police power is the power inherent in a government to enact laws, within constitutional limitations, to promote the health, safety, morals, order, comfort, and general welfare of society.[1] Freund says[2] that it means the power of promoting the public welfare by restraining and regulating

[1] See 12 Corpus Juris 904 and cases cited there.

[2] Freund on Police Power (1904), Preface.

the use of liberty and property. One of the classic definitions is that of Chief Justice Shaw of Massachusetts[3] who wrote,

> We think it is a settled principle, growing out of the nature of well-ordered civil society, that every owner of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the general enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this Commonwealth is . . . . held subject to those general regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and such reasonable restraints, and regulations established by law as the legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient. This is very different from the right of eminent domain—the right of a government to take and appropriate private property whenever the public exigency requires it, which can be done only on condition of providing a reasonable compensation therefore. The power we allude to is rather the police power; the power vested in the legislature by the Constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties, or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and the sources of this power than to mark its boundaries, and prescribe the limits to its exercise.[4]

SCOPE OF THE POLICE POWER IN GENERAL

The police power is, therefore, founded on the maxim, "*Sic utere tuo ut alienum non laedas*," which means, "so use your own so as not to do harm to others." Or, to put it another way, "the greatest good of the greatest number." The earliest case in which this doctrine is upheld is said to be[5] that of *Coates v. Mayor and Alderman of New York*

[3] Commonwealth v. Alger (1851), 7 Cush. (Mass) 53.

[4] Quoted by W. W. Willoughby in his Constitutional Law of the United States (1921).

[5] Bacon, C. W.: The American Plan of Government (1920), p. 221.

City,[6] decided in 1827. The sexton of Trinity Church buried a body in Trinity Churchyard in violation of a city ordinance and the city sought to have imposed on him a fine of $250. The defense was that Trinity Church had a property right to inter bodies in the churchyard and that this amounted to a contract. The Federal Constitution forbids any State to impair the obligation of a contract. The court denied this contention, however, and ruled that the ordinance in question, made pursuant to State authority for the preservation of health, was a policing regulation and not a law impairing the obligation of a contract. The court declared that "every right, from an absolute ownership in property, down to a mere easement, is purchased and held subject to the restriction, that it shall be so exercised as not to injure others."

The police power is the broadest in scope of any field of governmental activity. All persons in a State, including corporations, which as individual entities are considered as persons for most legal purposes, hold their property and engage in business, and must regulate their conduct subject to the police power of the State. This power can not be divested by the State, nor by any inferior legislative body to which it may be delegated. That it is the right and duty of the State, under this police power, to enact laws for the preservation of the public health has been decided by innumerable courts. In fact, a leading encyclopedia of law lists over one hundred such cases.[7]

SUBJECTS INCLUDED

The courts have given numerous opinions regarding the subjects which may be included within the scope of the police power. The older cases have dealt with many phases

[6] 7 Cowens (N. Y.) Rep. 585.

[7] Constitutional Law, 12 Corpus Juris 913, Note 64 (1917).

See Chicago etc. R. Co. v. Illinois (1906), 200 U. S. 561, 26 S. Ct. 341, 50 L. Ed. 596, 4 Ann. Cas. 1175.

of sanitation, such as the regulation of nuisances,[8] drainage requirements,[9] prevention of pollution of water supplies[10] regulation of waste disposal, and adulteration and sanitation of food and drugs.[11] There are also many decisions concerning the control of communicable diseases,[12] imposition of quarantine, vaccination,[13] milk,[14] prevention of prostitution,[15] licensing and regulation of occupations,[16] hours of labor,[17] and various other matters pertaining to the public health.

DISTINGUISHED FROM EMINENT DOMAIN[18]

Eminent domain is a term applied to the sovereign right of a State to take private property for a public purpose, whether the owner consents or not. Under this power of eminent domain the State must make adequate compensation for the property so taken. The police power is quite different, for under it restrictions may be placed on private property in the interests of the public health, safety, morals, or welfare, and no compensation need be paid. During a severe conflagration, houses in the path of the flames may be dynamited, or property which would spread disease may be destroyed,[19] in both instances under authority of the police power. If property is wanted for a public water works, sewage disposal plant, or other civic purpose

[8] See Chapter VIII, page 121.

[9] Wilson v. Sanitary District of Chicago (1890), 133 Ill. 443, 27 N. E. 203. N. Y. Tenement House Dept. v. Moeschen (1906), 203 U. S. 583, 27 Sup. Ct. 781, 51 L. Ed. 328.

[10] See Stream Pollution, Public Health Bulletin No. 87 (1917), U. S. Public Health Service, Washington, D. C.

[11] 11 Ruling Case Law 1094.

[12] See Chapter VII, page 104.

[13] See Chapter VI, page 89.

[14] See Chapter VI, page 98.

[15] See Chapter IX, page 140.

[16] See The Constitution and the Courts, Vol. II, p. 721 (1924).

[17] See above, page 19.

[18] See Lewis on Eminent Domain (3rd. Ed., 1909).

[19] Dunbar v. Augusta (1892), 90 Ga. 390, 17 S. E. 907.

which may incidentally or even directly affect the health of the people, it must, nevertheless, be taken only under the power of eminent domain, for such purpose is a corporate rather than a governmental one. An individual under the police power can not be compelled to devote his property to any particular use, but he may be compelled to refrain from using it for a purpose detrimental to the public health. Thus, a nuisance may be abated under the police power, or pollution of streams may be prohibited, even though property rights are concerned. The theory is that the owner may suffer some individual loss, but is compensated by sharing in the general benefits to public health,[20] and his injury is what is legally known as *damnum obsque injuria*, or damage without injury.[21]

DISTINGUISHED FROM TAXING POWER

The taxing power is used to raise revenue, whereas the police power, as so often stated, is employed only to promote the public welfare. In performance of the latter duty, licenses may be required and fees levied. Occupations may be taxed for restrictive purposes under the police power. The distinction is, therefore, one between regulation and revenue.

LIMITATIONS ON THE POLICE POWER

Frequently an act done under the authority of the police power comes in conflict with a clause of the Constitution, especially with one of those which comprise the bill of rights of all citizens. Which prevails? As a general proposition any reasonable act done under the scope of the police power will be upheld, other Constitutional provisions to the contrary. A recent pronouncement on this subject by a leading authority is found in the speech of Secretary of State Charles E. Hughes in his presidential address before the meeting of the American Bar Association in London,

[20] Parker and Worthington on Public Health (1892).

[21] Mugler v. Kansas (1887), 123 U. S. 664, 8 S. Ct. 273, 31 L. Ed. 205.

July 21, 1924. He is quoted by the New York Herald Tribune as follows:

> We have provided the constitutional guarantee that no one shall be deprived of life, liberty, or property without due process of law. But this did not confine practice to archaic forms or deny the opportunity of improvement. It did not refuse to legislatures the authority to enact reasonable measures to promote the safety, health, morals and welfare of the people, or make rational experimentation impossible, but it was intended to preserve and enforce the primary and fundamental conceptions of justice which demand notice and opportunity to be heard before a competent tribunal in advance of condemnation and, with respect to every department of government, freedom from arbitrariness. The process of applying these formulas has proved to be an education in reasonableness after the essential method of the common law.

DUE TO PROCESS OF LAW

The Fourteenth Amendment to the Federal Constitution requires that no State shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Suppose that a health officer, acting in accordance with local ordinances, removes a patient with smallpox to an isolation hospital against the patient's will and also seizes the bed and bedding used by the patient and burns it. He has deprived the person of liberty and property apparently without due process of law, if this phrase means that there must be an orderly procedure before a court of justice where the party may have an opportunity to be heard.

Such summary action would be upheld, as sanitarians know from actual experience. As a matter of fact, "due process of law" means more than a court proceeding. An excellent definition of its scope has been given by Pomeroy,[22]

> Due process of law implies primarily that regular course of judicial proceeding to which our fathers were accustomed at the time the Consti-

[22] Pomeroy on Constitutional Law, No. 246, quoted in Hemingway on Public Health (1914).

See also Cooley's Constitutional Limitations, p. 434 (6th Ed. 1890).

tution was framed; and, secondly, and in a subordinate degree, those more summary measures, which are not strictly judicial, but which had long been known in the English law, and which were in familiar use when the Constitution was adopted. These summary measures generally, though not universally, form a part of that mass of regulations which many writers term Police, and which relate to the preservation of public quiet, good order, health, and the like. . . . . The summary measures which may form a part of due process of law are those which have been admitted from the very necessities of the case, to protect society by abating nuisances, preserving health, warding off imminent danger, and the like, when the slower and more formal proceedings of the courts would be ineffectual.

The public welfare demands that the rights of the individual give way to those of the people as a whole. The United States Supreme Court has ruled[23] that policing regulations which actually do deny some persons the equal protection of the laws are not void on account of the Fourteenth Amendment. The Court said, "Neither the (Fourteenth) amendment . . . . broad and comprehensive as it is . . . . nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the peace, health, morals, education, and good order of the people. . . . ." This court had previously decided (1872) in the famous *Slaughter House Cases*[24] that a State could regulate as a health matter the location and operation of slaughter houses, and in *Fertilizing Company v. Hyde Park*[25] it upheld the right of a State to compel the removal of a malodorous business away from a place where it had been located under authority of State charter. While modern sanitary science would question the significance of slaughter houses and odors to public health, nevertheless, the principle of law holds good, namely, that valid exercise of the police power usually prevails over the equal protection of the laws clause of the Constitution.

[23] Barbier v. Connolly (1885) 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923.
[24] 16 Wall. 36, 21 L. Ed. 394.
[25] (1878), 97 U. S. 659.

FREEDOM TO CONTRACT

Section 10 of Article 1 of the Federal Constitution prohibits any State from passing a law impairing the obligation of contracts. Under this section a charter granted by a State to a private corporation has been held to be a contract which the State could not impair by subsequent legislation. This obligation clause applies to executory as well as executed contracts and to those entered into by the States as well as by private individuals. But here again the police power may be used when proper occasion arises, even to impair the obligation of contracts. As a State court said in a recent case (1924) in Massachusetts,[26] "Freedom of contract is not absolute. It is subject to reasonable legislative regulation in the interest of public health, safety, and morals, and, in a sense not resting merely on expediency, the public welfare. Valid statutes imposing limitations upon freedom of contract find numerous illustrations in our own decisions and those of the United States Supreme Court." The United States Supreme Court has, in fact, ruled[27] that "No legislature can bargain away the public health or the public morals."

RELIGIOUS BELIEFS

The Constitution guarantees freedom of religious beliefs, but such a guarantee does not render void a regulation of a school board requiring pupils to have a physical examination before admission,[28] such regulation being good under the police power. So too, a statute requiring applicants for marriage license to file a certificate showing freedom from venereal disease is not void under this Constitutional requirement, but is a valid exercise of the police power.[29]

[26] Commonwealth v. Boston Transcript Co. (1924), 144 N. E. 400.

[27] Stone v. Mississippi (1879), 101 U. S. 814, 25 L. Ed. 1079.

[28] Streich v. Aberdeen Bd. of Education (1914), 34 S. D. 169, 147 N. W. 779, L. R. A. 1915 A, 632, Ann. Cas. 1917 A, 760.

[29] Peterson v. Widule (1914), 157 Wis. 641, 147 N. W. 966, 52 L. R. A. (N. S.) 778, Ann. Cas. 1916 B, 1040.

Whether health regulations interfere with the religious views of Christian Scientists is a matter which has come before the courts on a number of occasions, and it has been generally held that the scientific (with a small "s") protection of the public health under the police power must be upheld.

CLASS LEGISLATION

Class legislation consists of laws which are limited in their operation to certain persons or classes of persons, so that these persons are unjustly discriminated against. For instance, an ordinance requiring the licensing of only such milk dealers as owned vehicles has been held invalid by a court as class legislation.[30] Statutes passed in the interest of the public health are void as class legislation only when they make an unreasonable discrimination between persons and classes, or apply in an arbitrary manner only to certain persons or types of persons. Compulsory vaccination is not class legislation,[31] nor is the requirement that chiropractors be licensed by a state board of medical examiners before being permitted to practise the healing art.[32] But in *Yick Wo v. Hopkins*,[33] the United States Supreme Court held void as a denial of the equal protection clause of the Constitution an ordinance requiring all persons who wished to establish laundries in frame houses to obtain the consent of certain public officials. This ordinance was obviously aimed against the Chinese and was held to be an improper use of the police power.

The sale of various kinds of goods within a State may be regulated under the police power. Different regulations for different kinds or classes of goods may be prescribed without denial of the equal protection of the laws. Thus, the sale

[30] Read v. Graham (1907), 31 Ky. L. R. 569, 102 S. W. 860.

[31] See Chapter VI, page 89.

[32] Jackson v. State (Ala., 1924), 99 So. 826; N. Y. Law Jour., June 27, 1924.

[33] (1886), 118 U. S. 366, 6 S. Ct. 1064, 30 L. Ed. 220.

and inspection of foods, such as bread,[34] milk,[35] and the like, may be the subject of regulations, but the legislature cannot, under the police power, forbid or wholly prevent the sale of a wholesome article of food,[36] and the United States Supreme Court has denied the right of a State to exclude oleomargarine from the State, though it has upheld State Laws regulating the sale of this commodity.[37]

The rights conferred by patent laws as authorized by the Federal Constitution do not abridge the right of a State to impose reasonable regulations upon patented articles, in accordance with the police power.[38]

INTERSTATE COMMERCE AND THE POLICE POWER

When matters affecting interstate commerce are involved, regulations made under authority of the police power, which conflict with the Federal power, will prevail only under certain conditions. It has been asserted that "the police powers of the States shrink into nothingness when they conflict with the power of Congress to regulate commerce among the States,"[39] though this is a trifle overstating the case. That a State law which, in its essential nature, is a legitimate exercise of the police powers, is not rendered invalid by reason of the fact that interstate commerce is thereby incidentally affected is well established.[40] While

[34] Schmidinger v. Chicago (1913), 226 U. S. 578, 33 S. Ct. 182, 57 L. Ed. 364.

[35] See Chapter VI, page 98.

[36] People v. Biesecker (1901), 169 N. Y. 53.

[37] Schollenberger v. Pennsylvania (1897), 171 U. S. 1, 43 L. Ed. 49.

Powell v. Pennsylvania (1888), 127 U. S. 678, 8 S. Ct. 992, 32 L. Ed. 253.

Plumley v. Massachusetts (1894), 155 U. S. 461, 39 L. Ed. 223.

[38] Patterson v. Kentucky (1878), 97 U. S. 501, 24 L. Ed. 1115.

Webber v. Virginia (1880), 103 U. S. 344, 26 L. Ed. 565.

[39] Bacon, C. W.: The American Plan of Government (1920).

[40] Willoughby, W. W.: Constitutional Law of the United States (1921).

A chapter on Public Health and the United States Supreme Court in the book by the author "The National Government and Public Health" (In press, 1925) discusses this proposition.

it is true that a State cannot, under the guise of invoking its police power, interfere with the authority of the Federal Government to regulate interstate commerce,[41] it may, nevertheless, enact inspection and quarantine laws which, in their application to interstate commerce, will be sustained if they are reasonable regulations in behalf of health, and do not conflict with Federal Statutes.[42]

Two examples will make more clear these distinctions. In 1889, the State of Minnesota passed a law which prohibited the sale of certain meats for human consumption unless they were taken from an animal inspected and certified before slaughter to be healthy. One Barber procured in Illinois beef not so inspected, transported it to Minnesota and sold it there. He was convicted in the latter State, but appealed to the Federal courts, and the United States Supreme Court held[43] that this State law was void as an improper interference with interstate commerce and an infringement upon the Federal Constitution. Today, of course, all meat shipped in interstate commerce for human consumption is inspected by Federal inspectors under Congressional authority.[44]

Hennington v. Georgia (1896) 163 U. S. 299, 16 S. Ct. 1086, 41 L. Ed. 166.
L. S. and M. S. Rwy. Co. v. Ohio (1899), 173 U. S. 285, 19 S. Ct. 465, 43 L. Ed. 702.
Houston v. Mays (1906), 201 U. S. 321, 26 S. Ct. 491, 50 L. Ed. 772.

[41] Passenger Cases (1849), 7 How. 283, 12 L. Ed. 702.
Peete v. Morgan (1873), 19 Wall. 581.
Chy Lung v. Freeman (1875), 92 U. S. 275, 23 L. Ed. 550.
Henderson v. Wickam (1875), 92 U. S. 259, 23 L. Ed. 543.
Hannibal R. Co. v. Husen (1877), 95 U. S. 465, 24 L. Ed. 527.

[42] Gibbons v. Ogden (1824), 9 Wheat 1, 6 L. Ed. 23.
Brown v. Maryland (1827), 12 Wheat 419, 6 L. Ed. 678.
License Cases (1847), 5 How. 504, 12 L. Ed. 256.
Morgan v. Louisiana (1886), 118 U. S. 455, 6 S. Ct. 1114, 30 L. Ed. 237.
Rasmussen v. Idaho (1901), 181 U. S. 198, 21 S. Ct. 594, 45 L. Ed. 820.
Compagnie Francaise v. State Board of Health (1902), 186 U. S. 380, 22 S. Ct. 811, 46 L. Ed. 1209.

[43] Minnesota v. Barber (1890), 136 U. S. 313, 10 S. Ct. 862, 34 L. Ed. 455.

[44] 34 Stat. 1260.

The other aspect of the situation is shown by the decision in *Louisiana v. Texas*.[45] In 1899 the state health officer of Texas placed an embargo on all persons and things coming into his state from New Orleans, where a case of yellow fever had occurred. The State of Louisiana thereupon brought suit against the State of Texas directly in the United States Supreme Court, alleging that this quarantine was an unlawful interference with interstate commerce. The Supreme Court, however, dismissed the bill, principally on the ground that there was not a justifiable controversy between the two States. The Court said,

> While it is true that the power vested in Congress to regulate commerce among the States is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution, and that where the action of the States in the exercise of their reserved powers comes into collision with it, the latter must give way, yet it is also true that quarantine laws belong to that class of state legislation which is valid until displaced by Congress, and that such legislation has been expressly recognized by the laws of the United States almost from the beginning of the Government.

The limits of interference with interstate or foreign commerce by the States were also well presented in *Railroad Co. v. Husen*,[46] where the Court said,

> While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons or animals suffering under contagious or infectious diseases, or convicts, etc, from entering the State; while for the purpose of self-protection it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce.

In this case a Missouri law prohibiting Texan cattle from being conveyed or driven into the former State was held unconstitutional, even though it was aimed at diseased

[45] (1900), 176 U. S. 1, 20 S. Ct. 251, 44 L. Ed. 347.
[46] (1877), 95 U. S. 465, 24 L. Ed. 527.

animals. Quarantine measures against animals have since been upheld.[47]

Where a State forbids the manufacture and sale of an article which is alleged to be injurious to health and yet the article is recognized as a legitimate subject of commerce, the United States will protect it in such commerce while in the original package.[48]

[47] Rasmussen v. Idaho (1901), 181 U. S. 198, 21 S. Ct. 594, 45 L. Ed. 820.
Smith v. St. Louis S. W. R. Co. (1901), 181 U. S. 248, 21 S. Ct. 603, 45 L. Ed. 847.
Reid v. Colorado (1902), 187 U. S. 137, 23 S. Ct. 92, 47 L. Ed. 108.

[48] Freund, Police Power, No. 137 (1904).

CHAPTER IV

State Health Departments

ORGANIZATION

In each of the States in the United States there is an executive bureau or department which administers the public health activities for the State.[1] In most instances these departments have been established by legislative authority, though in Louisiana the State Constitution outlines in some detail who shall comprise the State Board of Health. The constitutions of California, Delaware, and Florida specifically authorize the creation of the State Boards of Health in these States, though leaving the details to the legislature.

Historically, State health work in the United States developed subsequent to that in the towns, as has been pointed out in a previous chapter.[2] The report of the Massachusetts Sanitary Commission in 1850 urged that a State health board be established, but it was not until 1869 that this was done, thus creating the first State board of health of general scope in this country. Local health activities in this same commonwealth had been carried on since the latter part of the seventeenth century.

The general organization of State health departments at present is quite similar in most of the States, consisting of a board or council with an executive and such subordinates as are necessary. In 1914 every State but one had a *board* of health, but there has been some tendency of late years

[1] See Organization, Powers, and Duties of Health Authorities, An Analysis of the Laws and Regulations Relating Thereto in Force in the United States. Public Health Bulletin No. 54 (1912). United States Public Health Service, Washington, D. C.

[2] See Chapter I, page 10.

to do away with these boards and substitute therefor, either a single executive, or an executive with an advisory council. It is the consensus of opinion among leading sanitarians that the best administrative procedure is to vest all executive authority in State health matters in such a board or advisory public health council, whose functions shall be to pass necessary rules and regulations and to hold hearings and take action regarding violations of the sanitary code of the State; and an executive health officer. The system of a public health council with an executive was in 1925 in force in nine States: Connecticut, Maine, Massachusetts, Michigan, New York, North Dakota, Ohio, Pennsylvania, and West Virginia.[3]

Five States, Idaho, Illinois, Nebraska, Oklahoma, and Tennessee, and the District of Columbia have gone even further and have placed entire control of State health work in the hands of a commissioner of health. In Idaho, health activities were in 1925 under the department of public welfare, the commissioner of which was also executive health officer, though he had a medical adviser. In Nebraska a bureau of health was under the department of public welfare, and in New Mexico there was a similar board.

All of the other States have boards of health. The power of State legislatures to provide for the appointment of State boards of health and health officers has been upheld by the courts on numerous occasions.[4] As was said in a leading Ohio case,[5] "It is now the settled law

[3] See Directories of State Health Officials, issued annually by United States Public Health Service, Washington, D. C.

[4] Keefe v. Union (1903), 76 Conn. 160, 56 Atl. 571.
Wilson v. Sanitary District (1890), 133 Ill. 466, 27 N. E. 203.
Sawyer v. State Board of Health (1877), 125 Mass. 182.
Munk v. Frink (1905), 75 Nebr. 172, 106 N. W. 425.
State v. Hudson County Board of Health (1913), 85 N. J. L. 13, 89 Atl. 250.
State v. King County Superior Court (1918), 103 Wash. 409, 174 Pac. 973.

[5] State Board of Health v. City of Greenville (1912), 86 Ohio St. 1, 98 N. E. 1019, Ann. Cas. 1913 D, 52.

that the legislature of the State possesses plenary power to deal with (health) so long as it does not contravene the Constitution of the United States or infringe upon any right granted or secured thereby, or is not in direct conflict with any of the provisions of the constitution of this State and is not exercised in such an arbitrary and oppressive manner as to justify the interference of the courts to prevent wrong and oppression." The right of the courts to review acts of the legislature concerned with the public health when they are apparently unreasonable has likewise been upheld.[6]

APPOINTMENT AND COMPOSITION OF BOARDS

The State board or council of health is usually appointed by the governor, though often statutory requirements name certain State officials or other persons, as ex-officio members. Thus, in Alabama and South Carolina, the State medical society forms the board of health, and in some other southern States the medical society recommends persons for appointment to the board. Of this system Dr. C. V. Chapin wrote some years ago,[7]

> While it is of the utmost importance that the medical profession should take an active interest in public heatlh work, it does not seem wise to secure it by transferring to an organization entirely outside of the State government a most important department of executive work. This method does not . . . . seem to have produced results so much better than those attained under the more common form of organization, as to warrant such a dangerous delegation of power.

Sanitarians do not look with favor on ex-officio boards, but prefer that all members of a board of health should be appointed especially for those duties.

[6] Jacobson v. Massachusetts (1904), 197 U. S. 11, 49 L. Ed. 643, 25 S. Ct. 358, 3 Ann. Cas. 765.

Mugler v. Kansas (1887), 123 U. S. 623, 31 L. Ed. 205, 8 S. Ct. 273.

Minnesota v. Barber (1890), 136 U. S. 313, 34 L. Ed. 455, 10 S. Ct. 862.

Atkins v. Kansas (1903), 191 U. S. 207, 24 S. Ct. 124, 48 L. Ed. 148.

[7] Report on State Public Health Work, (1914). American Medical Association, Chicago (out of print).

Public officials who are ex-officio members of State boards of health include the governor,[8] secretary of state,[9] attorney general,[10] treasurer,[11] comptroller,[12] auditor,[13] and state superintendent of public instruction.[14] Sanitary or civil engineers are required to be members in some States, generally an excellent provision. Osteopaths,[15] dentists,[16] veterinarians[17] and pharmacists are occasionally members, and women were included in nine States[18] in 1924. Attorneys other than the attorney general are specially provided in three states.[19] The number of members varies from three to fifteen, according to statutory requirements in the different States.

RECOGNITION BY THE FEDERAL GOVERNMENT

In most of the Congressional enactments which have dealt with the subject of quarantine or national health, from 1796 to date, recognition has been afforded to the State health authorities.[20] In the Act of July 1, 1902,[21] the purpose of which was to enlarge the scope of the Marine Hospital Service, now the Public Health Service, the Surgeon General of that Service was authorized to call a national conference of State health officials whenever he deemed advisable or when not less than five State health boards or officers joined in a request for such a conference.

[8] Alabama, Alaska, Arizona, Iowa, Nevada, New Hampshire.
[9] Iowa, Nevada.
[10] Arizona, Hawaii, Maryland, New Hampshire, South Carolina.
[11] Iowa.
[12] South Carolina.
[13] Iowa.
[14] North Dakota.
[15] Colorado, Kentucky.
[16] New Jersey, North Carolina, North Dakota, Utah, Virginia.
[17] Georgia, New Jersey.
[18] California, Colorado, Delaware, Indiana, New Jersey, New Mexico, North Dakota, Utah, Virginia.
[19] California, Kansas, Maryland.
[20] See Barnes' Federal Code (1919), Nos. 8708–8734.
[21] 32 Stat. 712.

These conferences have been held annually since that time. The United States Supreme Court has likewise recognized the existence of State Health Departments in many decisions.[22]

OFFICERS AND EMPLOYEES

Every State has an executive officer of its State health department, who is variously called the "health officer," "secretary," "commissioner of health," etc. Seven of the executive officers were in 1924 only part time officials, in spite of the fact that all progressive sanitarians are agreed that the public health of a State is of sufficient importance to warrant the full time services of a competent trained health officer. Conditions have improved somewhat over a decade ago, however, for in 1914 there were sixteen part time State health officers.[23]

The manner in which this executive is appointed is determined by State law. Two systems are in vogue: (1) appointment by the governor; (2) appointment by the State board or council of health. The first method has the objection that political considerations may have weight, and politics and public health should be utterly and completely divorced if efficiency is to be attained in the preservation and promotion of the health of the people. That merit only and not politics can be considered under this plan, however, has been proved in New York and Massachusetts, where in recent years, efficient and capable State health officers have been appointed or kept in office under successive governors of different political faiths. The instances where the reverse has been the case, in other States, though, are too numerous to mention.

[22] See Chapter III, page 40. Compagnie Francaise de Navigation a Vapeur v. La. State Board of Health (1902), 186 U. S. 380, 46 L. Ed. 1209, 22 S. Ct. 811.

[23] Chapin, C. V.: Report on State Public Health Work. (1914), American Medical Association, Chicago. There were only 4 part time State health officers in 1925.

The term of office of the executive is generally fixed by law and varies in different States. There is often the provision that he may be removed for cause by the board or governor by whom he is appointed. His qualifications, compensation, and duties are frequently outlined by statute. Such a matter as the amount of salary should probably best be left to the discretion of the board or council. A legislative act of 1880 giving a full-time state health officer a salary of $2000 a year, which might have been reasonable in those days, would obviously be an anachronism in 1924, and such legislative provisions are often difficult to get changed. Most laws require the State health officer to be a physician, though it is far more important that he be skilled in sanitary science and public health work. There were in 1925, in fact, about a dozen high grade institutions which graduated with the doctorate in public health (Dr. P. H.), individuals who are entirely qualified from the scientific standpoint to administer any health department, State, county, or municipal. Most of these institutions required the "M.D." as a pre-requisite to the "Dr. P. H.," though two prominent colleges did not.[24]

Subordinate officers and employees are generally provided for by statute. A deputy State health officer may usually be appointed, as may other technical employees, such as sanitary engineers, bacteriologists, statisticians, and the like. Legal matters regarding authority, duties, and liabilities of health officials are treated in a subsequent chapter.[25]

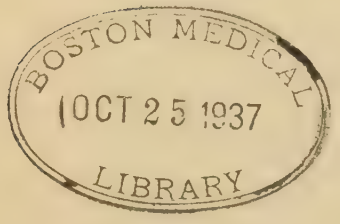
POWERS OF STATE HEALTH DEPARTMENTS IN GENERAL

The powers and duties of State health departments vary in the different States, being extensive in some and limited in others. In Pennsylvania, for instance, broad powers are given by law to the State Department of Health, while in

[24] Massachusetts Institute of Technology (Department of Biology and Public Health); University of Michigan (Graduate School).

[25] See Chapters XI and XII, pages 163 and 178, Officers.

Massachusetts the local boards carry on the bulk of the health activities in the State, though in accordance with State laws.[26] The powers may in general be grouped under the following five headings, though there is, of course, some overlapping:



1. Code Making
2. Quasi-judicial
3. Administrative
4. Investigative
5. Educational

CODE-MAKING POWER

The power to make rules and regulations is a quasi-legislative one. While it is true that under the separation-of-powers theory of our government,[27] neither the executive branch of government nor any portion of it can usurp the right of the legislative branch to make laws, after legislation has been passed laying down the principles to govern certain circumstances, power may be delegated to administrative boards to make rules for further carrying out the law. Thus, most State health boards or departments have been granted authority by the State legislature to make sanitary codes to carry out the health laws of the State. This power to draft health regulations has been upheld by many courts,[28] as has also the proposition that such regula-

[26] See Curtis, G. C.: Legal Limitations and Authority of Massachusetts Local Boards of Health. Boston Medical and Surgical Journal, May 11, 1922.

[27] See Chapter II, page 14.

[28] California Reduction Co., v. Sanitary Reduction Works (1905), 199 U. S. 306, 50 L. Ed. 204.

Lieberman v. Vandecarr (1905), 199 U. S. 552, 50 L. Ed. 305, 26 S. Ct. 144.

Isenhour v. State (1901), 157 Ind. 619, 62 N. E. 40, 87 Am. S. R. 228.

Blue v. Beach (1900) 155 Ind. 121, 56 N. E. 89, 80 Am. S. R. 195, 50 L. R. A. 64.

Miller v. Johnson(1921) 202 Pac. 619, 110 Kan. 135.

New Orleans v. Sam Kee (1902), 107 La. 762, 31 So. 1014.

Lawrence v. Briry (1921), 132 N. E. 174, 239 Mass. 424.

tions have the effect of law.[29] The boards can not, however, take cognizance of matters not within the scope of public health. A law giving a State board of health authority to make rules and regulations does not, moreover, authorize it to delegate this power to another board.[30]

The rules to be followed in drafting health regulations are similar to those for writing health legislation and are considered in detail in another chapter.[31] The methods for adopting such regulations are also taken up there.

Subjects which may be included in regulations are those expressly mentioned or implied in the State health laws. The control of communicable diseases,[32] registration of births and deaths, control of food supplies, general sanitation, control of railroads and tourist camps, and the licensing of certain trades and occupations, such as midwives, are usual matters which can be regulated. In many States, the law authorizes the board to make rules simply "for the

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Hurst v. Warner (1894), 102 Mich. 238, 60 N. W. 440, 47 Am. S. R. 525, 26 L. R. A. 484.

Hawkins v. Hoye (1914), 108 Miss. 282, 66 So. 741.

Borden v. Montclair (1911), 81 N. J. L. 218, 80 Atl. 30.

State v. Beacham (1899), 125 N. C. 652, 34 S. E. 447.

Polinsky v. People (1878), 73 N. Y. 65.

Kirk v. Aiken Board of Health (1909), 83 S. C. 372, 65 S. E. 387, 23 L. R. A. (N.S.) 1188.

Shilkett v. State (Okla. 1925), 232 Pac. 127.

[29] Blue v. Beach, Miller v. Johnson, Polinsky v. People, and Hurst v. Warner cited in (28) above.

Pierce v. Doolittle (1906), 130 Ia. 333, 106 N. W. 751, 6 L. R. A. (N. S.) 143.

State Board of Health v. Suslin (1913), 132 La. 569, 61 So. 661.

State v. Snyder (1912), 131 La. 145, 59 So. 44.

Belmont v. New England Brick Co. (1906), 190 Mass. 442, 77 N. E. 504.

Cartwright v. Cohoes (1901), 165 N. Y. 631, 59 N. E. 1120.

State v. Morse (1911), 84 Vt. 387, 80 Atl. 189, 34 L. R. A. (N. S.) 190, Ann. Cas. 1913 B. 218.

State v. Burdge (1897), 95 Wis. 390, 70 N. W. 347, 60 Am. S. R. 123, 37 L. R. A. 157.

[30] Commonwealth v. Staples (1906), 191 Mass. 384, 77 N. E. 712.

[31] See Chapter XIII, page 189.

[32] See Chapter VII, page 104.

preservation of the public health." In fact, there is little uniformity in these permissive clauses. Examples of excellent sanitary codes promulgated under State law by health departments are those of New York, New Jersey, and Connecticut.

Inasmuch as the preservation and promotion of public health is a highly technical subject and one with which the average legislator is not familiar, it would seem to be the wisest and best procedure to delegate to a body which is reasonably proficient in these matters and has a presumably expert executive, the power to outline by means of regulations the details of how to carry out health laws. State legislation should be specific to the extent that it names the subjects to be regulated, but discretion should be given to the board to express the best scientific thought on these technical matters.

QUASI-JUDICIAL POWERS

State boards of health or councils usually have the power to summon before them persons alleged to have violated the State health regulations, and also witnesses. The purpose of such hearings, which are quasi-judicial in character, is to determine the guilt or responsibility of individuals and the hearings are preliminary to action of some kind, either summary or in court. The individual concerned always has the right to contest the action of the board in the courts, if he so elects, for only the courts are the final arbiters of judicial matters. A hearing may be held, for instance, preliminary to revoking a license,[33] or in order to determine whether to bring court action against a corporation, either private or municipal, for the pollution of a stream.[34] Provision in the laws regarding hearings vary in each State, as would be expected. In some, they are expressly provided for and power is even given by law to the boards to summon

[33] People v. Wilson (1911), 249 Ill. 195, 94 N. E. 141.

[34] See Chapter VIII, page 128.

witnesses and compel them to testify. In others, the power of holding hearings may be considered as necessarily implied in the administrative functions of the board. There seems to be no good reason why such hearings should not be held whenever considered necessary, but whether the person who is the subject of the inquisition and the witnesses can be required to attend depends on the statutes. Such persons generally find it expedient to do so, law or no law.

ADMINISTRATIVE FUNCTIONS

In the beginning State health departments were probably intended to be merely advisory and to have only investigative functions, except possibly in some of the maritime States where quarantine was important. Today, however, the scope and duties of nearly all the State health departments have been greatly enlarged, so that much actual operation is carried on. Some of the functions which are legally undertaken include: the collection of vital statistics, the promotion of child and maternal hygiene, control of communicable diseases, control of food supplies, sanitary engineering, issuance of licenses, and various miscellaneous duties.

VITAL STATISTICS[35]

Vital statistics, often called the book-keeping of public health, include reports of births, marriages, and deaths. In practically every State, the health department, which is the logical agency, collects these data for the State. In Massachusetts the registrar of vital statistics is in the office of the Secretary of State. Vital statistics are usually first collected in a State by local registrars who retain a copy of each certificate or report and forward the original (or vice versa) to the State registrar, where it is filed. Standard forms for reporting are used in practically all the States. A model State vital statistics law[36] has been suggested by

[35] See also Chapter V, page 79.

[36] See Supplement No. 12 (1914), United States Public Health Service, Washington, D. C.

a joint committee of the American Medical Association, American Public Health Association, United States Bureau of the Census, and ratified by the Conference of State and Provincial Boards of Health of North America, and by 1925 had been adopted in most of the States.

The United States Bureau of the Census, which maintains a Division of Vital Statistics, has established nationally what are known as "registration areas" for births and deaths. A State is admitted to the Birth Registration Area or the Death Registration Area when 90 per cent of the births or deaths, respectively, are reported. In 1925 the Birth Registration Area included 34 States and the District of Columbia. All the States except Arizona, Nevada, and South Dakota had satisfactory laws, but in a number of them the law had not been in force sufficiently long to bring registration to 90 per cent. The Death Registration Area comprised forty States, the District of Columbia, and a number of cities in non-registration States in 1925, and all States except the same three had satisfactory legislation. In a number of other States the laws were under trial. The Bureau of the Census issues annually tables of mortality statistics and other pamphlets.[37]

Vital statistics are important as legal records as well as public health ones.[38] A birth certificate is competent evidence as to age, parentage, place of birth, and other important facts. A copy of a board of health record has been held to be good evidence as to the cause of death of a person.[39] Both, being public documents, kept as records according to law and by disinterested persons, are admissable as evidence in courts of law.[40] Certified copies may usually

[37] See Tobey, J. A.: The Division of Vital Statistics of the United States Bureau of the Census. Journal of the American Statistical Association, June, 1922.

[38] Why Should Births and Deaths Be Registered? American Medical Association, Chicago.

[39] Beglin v. Insurance Co. (1903), 173 N. Y. 374, 66 N. E. 102.

[40] McKelvey on Evidence (1907).

be employed in place of the originals, which it would be impractical and inconvenient to take to court. The use of vital statistics by municipalities will be discussed later.[41]

CHILD HYGIENE

In 1914 Dr. C. V. Chapin found from his survey of State health work that almost nothing was done by the States to cope with infant mortality, except to issue a few pamphlets. Ten years later 40 States were operating in the field of child hygiene and were receiving Federal aid under the Federal Act for the Promotion of Maternity and Infant Hygiene,[42] the constitutionality of which has been discussed in a previous chapter.[43] The only States which had not accepted this act in 1925 were Connecticut, Kansas, Illinois, Maine, and Massachusetts. Authorization of appropriations for five years beginning in 1922 is contained in this law but whether it will be continued after this period will be for Congress to determine. Activities carried on include:[44] The employment by health departments of physicians, public health nurses, dentists, dietitians, health teachers and social workers; education of the public through lectures, demonstrations, exhibits, and films; maternity consultations or centers; mothers' classes, correspondence courses and other forms of educational work for mothers; training and supervision of midwives; health conferences; dental clinics; nutrition classes; inspection of maternity and children's homes. Much of the work has been directed toward taking to the rural mother and baby the health facilities which the city mother has had.

Another important matter in child hygiene activities is

[41] See Chapter V, page 79.

[42] 42 Stat. 135.

[43] See Chapter II, page 23.

[44] The Promotion of the Welfare and Hygiene of Maternity and Infancy (Bureau Publications Nos. 137 and 146), U. S. Children's Bureau, Washington, D. C. (1924 and 1925).

the licensing and supervision of midwives by the State.[45] The discretionary power of a State commissioner of health to issue or withhold annual licenses for midwives in accordance with State law and the Sanitary Code has been upheld by the Appellate Division of the Supreme Court of New York.[46]

Prevention and control of blindness from ophthalmia neonatorum is now dealt with by legislation in many States. Forty-seven require the reporting of babies' sore eyes and thirteen print this reporting law on the birth certificate. The use of a prophylactic packet by physicians and midwives is compulsory in 29 states. Much has been accomplished in reducing blindness due to this cause and with the existence and adequate enforcement of scientific State legislation, ophthalmia neonatorum as a source of blindness can be eliminated, according to competent authorities.[47]

PUBLIC HEALTH NURSING[48]

In practically every State there are now employed public health nurses. A public health nurse is a graduate nurse who has received a special course in public health and who is employed "as a missionary to carry the message of good health into the homes of the people." In ten States in 1924 such nurses were attached to bureaus of child hygiene of State health departments. In eighteen States, however, there were separate bureaus or divisions of public health nursing in the State health departments, while in eight States, there were bureaus of child hygiene and public

[45] Foote, J. A.: The Midwife Practice Laws of the States. American Journal of Obstetrics and Diseases of Women and Children, Vol. lxxx, No. 5 (1919).

[46] Barresi v. State Commissioner of Health (1922), 203 App. Div. 2.

[47] Summary of State Laws and Rulings Relating to the Prevention of Blindness from Babies' Sore Eyes. (Publication No. 9, 1924) National Committee for the Prevention of Blindness, New York. See also Chapter X, page 138.

[48] See Gardner, M. S.: Public Health Nursing (1924).

health nursing.[49] Only two States expressly provide by law for bureaus of public health nursing. These are New York, which requires a division of public health nursing in the State department of health, and Kentucky, where such a bureau is authorized.[50] Laws in five States in 1923 authorized the employment of public health nurses directly under the supervision of the State itself. In all States which had accepted the Federal Maternity and Infancy Act,[51] the employment of public health nurses could be implied as incidental to the carrying out of the terms of the act and, as a matter of fact, most of these States did utilize the services of public health nurses. In 33 States public health nurses were in 1923 authorized to be employed by counties, municipalities, or school districts.

The special duties performed by public health nurses in State health departments include the following:[52]

1. Child health conferences and demonstrations.
2. Organization of volunteer services.
3. Classes for midwives and mothers, with prenatal instructions.
4. School nursing, physical examination of school children, inspections.
5. Health educational work and health talks.
6. Follow-up of clinic and school cases.
7. Maternal and infant hygiene.

Public health nurses, being employees and not officers, are usually appointed by the State commissioner of health, and in a few instances they have a civil service status. They are required either by law or regulation to be graduate nurses and registered as such.[53]

[49] Minnigerode, L.: A Survey of Public Health Nursing in State Departments of Health; Public Health Reports, Dec. 12, 1924, U. S. Public Health Service, Washington, D. C. (omits Colo., Idaho, Nev., W. Va., and Porto Rico).

[50] Tobey, J. A.: A Review of State Laws on Public Health Nursing, Public Health Nurse, April, 1923.

[51] 42 Stat. 224.

[52] Same as (49).

[53] See McCarthy, L.: Digest of the Laws of the States Requiring Registration for Nurses and Attendants, American Nurses Association, New York (June, 1924).

CONTROL OF COMMUNICABLE DISEASES[54]

Although the actual control and prevention of the communicable diseases is mostly a local matter, the State has certain responsibilities. The first is to see that there are adequate legal requirements for practical reporting by physicians and others. The best procedure is for the State department of health to make regulations governing this matter, under the authority of State law. Epidemiological investigations by State officials are also important, for diseases have an unfortunate way of disregarding boundary lines between local communities so that State action is proper and necessary. During severe outbreaks or epidemics it is usually proper for the State department to advise local authorities or, when necessary, to assume actual control. A State diagnostic laboratory is another important duty for the State department of health, for many communities are unable for various reasons to maintain laboratories of their own and, in fact, small communities should hardly be expected to do so. Branch laboratories or health centers may be established by law for convenience and efficiency in large States. Sometimes, the laboratory is connected with the State University. Distribution of antitoxins, serums, and vaccines is undertaken in many States, and this seems to be a legitimate use of State funds. The State is not a guarantor of the purity of such biological products and is not liable for injury caused by impure ones.[55] The local control of communicable diseases is discussed later.[56]

[54] See Communicable Diseases: An Analysis of the Laws and Regulations for the Control Thereof in Force in the United States. Public Health Bulletin No. 62 (1913), United States Public Health Service, Washington, D. C.

[55] Wyatt v. Rome (1898), 105 Ga. 312, 31 S. E. 188, 78 Am. S. R. 262, 42 L. R. A. 180.

Sandel v. South Carolina (1922), 104 S. C. 567, 119 S. E. 776.

[56] See Chapter VII, page 104.

FOOD

In many States the execution of pure food laws is vested in the State health department, though in some there is either a separate bureau under the direction of a pure food commissioner or other officer, or the administration of such laws may be under the supervision of the State department of agriculture or some similar appropriate division of the government. Statutes to prevent and penalize adulteration of foods and to provide for sanitation of them are in force in every State.[57] Such legislation has been upheld as proper under the police power of the State,[58] as it is obviously designed to promote the health and general welfare of the people. Whether in a given instance the manufacture and sale of an article intended for human consumption is deleterious to health, and whether the public welfare demands that such business be prohibited, are properly questions of fact and policy exclusively for the legislature to determine.[59]

The regulation of foods and drugs in interstate commerce is provided for by the Federal Pure Food and Drugs Act,[60] in which food is defined as "all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound." The analytical work, investigation, and inspection under this act is performed by the United States Bureau of Chemistry in the Department of Agriculture, which has issued rules and regulations for carrying out the terms of the law.[61] The

[57] Dunn's Pure Food and Drugs Legal Manual (1912–3).

Westervelt, J.: American Pure Food and Drug Laws (1912).

Manual of Federal and State Laws on Pure Foods (1924), Standard Remedies Publishing Company.

[58] See 26 Corpus Juris 752–756 and cases cited.

[59] 11 Ruling Case Law 1096.

People v. Price (1913), 257 Ill. 587, 101 N. E. 196, Ann. Cas. 1914 A 1154.

Comm. v. Pflaum (1912), 236 Pa. St. 294, 84 Atl. 842, Ann. Cas. 1913 E 1287.

[60] Act of June 30, 1906 (34 Stat. 768) as amended.

[61] Circular 21 (1922), U. S. Department of Agriculture, Washington, D. C.

inspection of meat intended for interstate shipment is, by another Federal law,[62] carried on by the employees of the Bureau of Animal Industry of the United States Department of Agriculture. This Federal supervision does not prevent the States from passing laws dealing with regulation of foods and drugs within the States themselves, but such legislation can not in any way interfere with interstate commerce. Articles so shipped remain in interstate commerce so long as they are in the original packages.

Municipal regulation of foods, civil liability for the sale of impure and unwholesome foods, and the legal aspects of milk control are taken up elsewhere in this book.[63]

ENGINEERING

The engineering activities of the State department of health are among the most important of any. The control of public water supplies is peculiarly a State responsibility. The municipality itself may construct and maintain water works and sewage disposal plants, but usually the plans for such new devices or changes in old ones are required by law to be approved by the State department of health. As Dr. Chapin says,[64] "The relations of communities to one another have such an important bearing on the purity of water supplies, and the cleanliness of streams and lakes, that the central authority of the state is needed to prevent the trespass of one community on the rights of another."

Sanitary Engineers were in charge of this engineering work in 41 States in 1925, in all but one case under the department of health. In 1923 New York shifted the direction of the public health engineering from the depart-

[62] Act of June 30, 1906 (34 Stat. 679); Barnes Federal Code (1919), Secs. 8257–8269.

[63] See Chapter V, page 67 on Municipal Health Departments; Chapter XII, page 186 on Liability; and Chapter VI, pages 98 and 101 on Special Powers of Health Departments.

[64] Report on State Public Health Work (1914), American Medical Association, Chicago.

ment of health to the State Engineer's Department, a change which has been condemned by the majority of those persons competent to criticise. The object of the Sanitary engineering department, as Whipple says,[65] is "to conduct such investigations and provide such information that the State board (or department) may act as may be necessary to maintain and improve the cleanliness of the environment of the people."

INDUSTRIAL HYGIENE[66]

Supervision of industrial hygiene is usually given to a State department other than the health department, such as the State department of labor. Rules and regulations of the health authorities, however, apply to industries, just as they do to any other matter within the State, and must be adhered to, if conditions warrant their application. Special regulations concerning the hygiene of industry may be promulgated in accordance with law by a different department.

Many industrial processes are dangerous to the health of the worker[67] and may give rise to occupational diseases, which have been defined[68] as "injuries and disturbances to health contracted in industrial pursuits, and other vocations in life, as a result of exposure to toxic agents, infectious organisms, or other conditions inimical to health." Examples of industrial hazards are chemicals, dusts, compressed air, anthrax, and abnormal physical conditions, such as excessive heat, humidity, etc. The State, as the guardian of public health and welfare, has a legitimate interest in conserving the vitality of industrial workers and may, to

[65] Whipple, G. C.: State Sanitation. Reprint No. 710 (1921), United States Public Health Service, Washington, D. C.

[66] Kober, G. M., and Hayhurst, E. R.: Industrial Health (1924), Blakiston.

[67] Frankel, L. K.: The Health of the Worker, National Health Series of the National Health Council, New York (1924).

[68] Kober, G. M.

this end, make appropriate laws, and give to boards or departments authority to make regulations to carry out the law. Such laws and rules may prohibit dangerous conditions, regulate the plant or the person, or compensate for injuries received.

Reporting of occupational disease may be required, and also inspection of factories and other industrial plants, and orders given for remediable action if sanitary or mechanical defects are found. An industrial sanitation code was being drafted in 1925 by the United States Public Health Service for submission to the American Engineering Standards Committee (New York), which already has safety codes of various kinds, including codes of lighting and ventilating for manufacturing establishments.[69]

Workmen's compensation laws are in force in practically all the States and provide for payments and medical or hospital care for accidents to workman in line of duty.[70] What is an accident is a nice question which the courts have often had to decide. In some jurisdictions, diseases, such as typhoid fever,[71] tuberculosis, etc. contracted during and as a result of the course of employment have been held to be accidents. The exact wording and intention of the statute must determine such matters, with the court as the interpreter of the will of the legislature.

Child labor, which has a direct influence on the public health, is regulated to some degree by most of the states.[72]

[69] Code of Lighting for Factories, Mills, and other Work Places, Reprint 499 (1919), U. S. Public Health Service, Washington, D. C.

See Safety Code Series (Nos. 331, 336, 338, 351, 364, 375, 378) U. S. Bureau of Labor Statistics, Washington, D. C.

[70] Comparison of Workmen's Compensation Laws of the United States as of January 1, 1925. Bull. No. 379, U. S. Bureau of Labor Statistics, Washington, D. C.

See Standards for Workmen's Compensation Laws (1925), American Association for Labor Legislation, New York. This agency also has other suggested standard laws for the welfare of industrial employees.

[71] See Chapter XII, page 185.

[72] See Model Child Labor Act and other publications of the National Child Labor Committee, New York.

LICENSING

Various occupations and callings are examined and licensed by some or all of the State health departments. The legislature may regulate all callings related to public health.[73] In a number of States the health department is authorized to license physicians,[74] though the consensus of opinion favors the doing of this by a separate board of medical examiners. All schools and classes of healers, such as members of the regular medical profession, osteopaths, chiropractors, and others should be required to have the same standards and undergo the same examination and then, if successful, be permitted to practise according to whichever theory they desired. In spite of the fairness of such requirements, standards vary in the different States and osteopaths and chiropractors sometimes have separate examining boards.[75]

Other persons who are licensed by some State health departments are nurses, midwives, optometrists, dentists, pharmacists, veterinarians, plumbers, and embalmers. For efficiency in administrative procedure it would be better if all such licenses, with the possible exception of midwives, were issued by other boards, preferably a State board of registration under the Department of Education. This is now the system in several States.

Hospitals and institutions, either State, local, or private, are sometimes licensed and inspection and control over them is often authorized. Hotels, railroads, and summer camps are also frequently supervised.

INVESTIGATIVE POWERS

Practically all State Laws authorize or direct the State health department to investigate causes and prevention of

[73] State v. Armstrong, (1924), 38 Idaho 493, 225 Pac. 491.

[74] State ex rel Farber v. Shot, (Mo., 1924), 263 S. W. 804.

[75] See Regulation of the Practise of Medicine (1915), American Medical Association, Chicago.

disease, sanitary conditions and factors, and ways and means of health promotion and preservation.[76] This is a proper function of any government organization, provided the investigation is within the scope of its interests and responsibilities.

EDUCATIONAL POWERS

Education of the general public is one of the most important features of any modern public health work. Such activities may properly be undertaken by State health departments and in many States are authorized by statutes. In the absence of such legislation this power may be legitimately considered as implied. The methods and scope of such work are, of course, not in the domain of a book on public health law and, in fact, a text could be written on this subject alone. Possible legal complications due to libel will be considered later.[77]

RELATION TO LOCAL AUTHORITIES

The amount of control exercised by the State health department over local officers and conditions is governed by the statutes of each particular State. That a certain amount of control is desirable is agreed by sanitarians and students of government, although the principal of local autonomy is a precious one. In some of the larger cities, such as New York and Baltimore, the State department has no jurisdiction whatsoever, while in rural regions it often has complete control. In case of severe epidemics, the State often has the power to step in for a temporary period. The Federal health authorities can never interfere with local health work, unless invited by the State, or if interstate or foreign commerce is affected.

In a few States local health officials are actually appointed by the State department, while in a number their qualifica-

[76] McAnally v. Goodier (1905), 195 Mo. 551.

[77] See Chapter XII, page 89.

tions are set forth by the State board or council. In New Jersey all local health officials must have a license issued by the State. Removal is sometimes provided for by the State health department. The Model Health Code of the American Public Health Association suggests appointment of local health officers by the mayor, subject to approval by the State health department, but removable by the mayor only for cause after a proper hearing. There is some conflict of opinion as to whether this is the best system, however. The rules and regulations promulgated by the State health department may often deal intimately with local affairs, provided such broad power is authorized by State law. In all matters of public health the municipality acts as agent of the State.[78]

SANITARY DISTRICTS

The creation of State sanitary districts under the direction of State district health officers or supervisors has recently been growing in favor and such districts have been established in California, Illinois, Massachusetts, New York, and other States. These districts have been held by the courts to be political subdivisions of the State to promote the public health,[79] and as such, proper machinery for carrying out the affairs of the State.[80] They are in the nature of public corporations,[81] but may be created separate from local authorities by legislation.[82] All their powers are under legislative supervision and only such as are delegated to

[78] Attorney General v. City of Detroit, (Mich., 1924), 196 N. W. 391.

[79] Judge v. Berman (1913), 258 Ill. 246, 101 N. E. 574.
People v. Nelson (1890), 133 Ill. 565, 27 N. E. 217.
Metropolitan Board of Health v. Heister (1868), 37 N. Y. 661.

[80] People v. Bowman (1910), 247 Ill. 276, 93 N. E. 244.

[81] In re Werner (1900), 129 Cal. 567, 62 Pac. 97.

[82] Woodward v. Fruitvale Sanitary District (1893), 99 Cal. 554, 34 Pac. 239.
Wilson v. Chicago Sanitary District (1890), 133 Ill. 443, 27 N. E. 203.

them can be exercised.[83] The formation of a sanitary district along the same lines as a county does not superimpose on the county a public corporation exercising identical powers, and it is within the police power of the State to provide for creation of such districts and give them even greater authority in health matters than is possessed by the county itself, which has no jurisdiction over public health in incorporated cities and towns in the county, according to a recent decision.[84]

[83] Stumpf. v. San Luis Obispo County (1901), 131 Cal. 364, 63 Pac. 663, 82 Am. S. R. 350.

Guptill v. Kelsey (1907), 6 Cal. A. 35, 91 Pac. 409. In re Werner, cited in (81).

[84] Stuckenbruck v. Board of Supervisors of San Joaquin County (Cal. 1924), 225 Pac. 857.

CHAPTER V

Local Health Departments

The term "local health department," as distinguished from "State health department," includes county, city, town, township, village, borough, or other local boards of health and health officers. Such local health departments are created either in accordance with laws passed by the State legislature or sometimes under the charter of municipal corporations, these charters being granted by the State either under general or special legislation. The power of the legislature to provide for health departments for the local subdivisions of the State has often been upheld by the courts,[1] and it is generally conceded that the exercise of the police power may be delegated to municipal corporations and other political subdivisions of the State.[2]

COUNTY HEALTH DEPARTMENTS

In many States, especially in the south, the county is an important unit of government. This is particularly true

[1] Keefe v. Union (1903), 76 Conn. 160, 56 Atl. 571.
Wallor v. Wood (1884), 101 Ind. 138.
Comm. v. Swasey (1882), 133 Mass. 538.
Atty. Gen. v. McCabe (1899), 172 Mass. 417, 52 N. E. 717.
Rock v. Carney (1921), 216 Mich. 280, 185 N. W. 798, 22 A. L. R. 1178.
State v. Zimmerman (1902), 86 Minn. 353, 90 N. W. 783, 91 Am. S. R. 351, 58 L. R. A. 78.
Istan v. Naar (1913), 84 N. J. L. 113, 85 Atl. 1012.
Crayton v. Larabee (1917), 720 N. Y. 493, 116 N. E. 355, L. R. A. 1918 E. 432.
State v. Seavey (1894), 7 Wash. 562, 35 Pac. 389.

[2] Blue v. Beach (1900), 155 Ind. 121, 56 N. E. 89, 80 Am. S. R. 195, 50 L. R. A. 64.
Hengehold v. Covington, (1900), 108 Ky. 752, 57 S. W. 495.
Bryant v. City of St. Paul (1885), 33 Minn. 289, 23 N. W. 220, 53 Am. R. 31.
Salem v. Eastern R. Co. (1868), 98 Mass. 431, 96 Am. Dec. 650.
See 80 American State Reports, 212.

in rural districts where there are no metropolitan cities and few, if any large cities. As a consequence, county health departments have been established in many of these States, a movement stimulated by the United States Public Health Service, through its Rural Sanitation Office, and also by the International Health Board of the Rockefeller Foundation, which has rendered much financial and technical assistance to many of these county units for demonstration purposes. In 1924 there were 250 such county health departments with full-time health officers in 30 States.[3] In 1920 there were only 109 such county health departments, in 1921 there were 161; in 1922, 202; and in 1923, 230. Many authorities believe that the county is the most important administrative health unit in rural work, but in 1924 only about 12 per cent of the total population of the country was served by this type of health department.

The creation, appointment, powers, and duties of county health departments are usually set forth in the State laws. Generally speaking, a county health department has no jurisdiction over incorporated cities and towns in the county, though a statute may provide otherwise. Sometimes, the office of county and city health officer may be combined. The fundamental legal powers and liabilities of county health departments and officers, are, in general, similar to those of other local health departments and these will be considered more in detail in connection with municipal health authorities.

In Connecticut, county health officers are attorneys. They appoint town health officers, except in towns whose limits are coterminous with those of cities or boroughs, and assist them in legal questions. They may also fill vacancies in city or borough health officerships which exist for more than thirty days.[4]

[3] Lumsden, L. L.: Extent of Rural Health Service in the United States, 1921–1925. Public Health Reports, May 8, 1925. U. S. Public Health Service, Washington, D. C.

[4] Hiscock, I. V. and Munson, F. M.: Public Health Practice in Small

MUNICIPAL CORPORATIONS

Corporations are of two kinds, public and private. The former are those which are created for governmental reasons, as cities, towns, villages, etc., while the latter are formed for the conduct of a private business. The city of East Orange, N. J., is a public corporation, while the American Public Health Association, chartered by the Commonwealth of Massachusetts, is a private corporation. Counties, townships, and school districts are generally considered as quasi-corporations. A corporation is an artificial person, created by law, and having an individuality distinct from the members who compose it; its powers being limited to those expressly granted to it or necessarily implied in the law by which it is created.[5] Municipal corporations may also exercise those powers which are essential or indispensable. In some jurisdictions boards of health are themselves corporations with the right to sue and be sued.[6]

MUNICIPAL HEALTH DEPARTMENTS

Included in the term "municipal health department" are the boards of health and health officers of incorporated cities, towns, and villages, as all of these political entities are known as "municipalities," though there is, of course, some divergence in the meaning in the various States. In most of the States legislation makes obligatory the organization of boards of health in such municipalities, but sometimes this is optional in municipalities of certain classes or populations. In Massachusetts, for instance, every incorporated municipal government must have a

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Cities and Towns in Connecticut. American Journal of Public Health, November, 1924.

[5] Clark on Corporations (1916).

[6] Forbes v. Board of Health (1891), 27 Fla. 189, 9 So. 446, 26 Am. S. R. 63. Forbes v. Board of Health (1891), 28 Fla. 26, 9 So. 862, 13 L. R. A. 549. Board of Health v. Copcutt (1893), 140 N. Y. 1, 35 N. E. 320, 23 L. R. A. 481, 37 Am. S. R. 522.

health department,[7] whereas in Minnesota such an organization is required in cities but is permissive in villages.[8]

Most municipal health organizations are administered by boards of health with an executive, though there has been some tendency of late to change to the system of control by a single commissioner. The Model Health Code (1921) of the American Public Health Association suggests a municipal health department under the direction of a health officer and states in a note, "The Committee is of the opinion that all authority in municipal health should be centralized in the health officer alone. As an alternative, there may be a public health council, whose duties are purely advisory. Most municipal laws provide for a board of health, but the Committee believes that the best administrative procedure requires one man control." Not all sanitarians will agree that this is the most efficient system, many favoring control by a council. In the last analysis the successful operation of either system seems to depend largely upon personality, in one case of the executive, in the other of the board and executive.

The Committee on Municipal Health Department Practice of the American Public Health Association found from its survey of the 83 largest cities of the country in 1920, that in 13 there was a single executive with an ex-officio board of health made up of other members of the governing body. In 37 cities there was a separate appointive board of health and a health officer. In 33 cities the health department was administered by an executive officer without a board of health. The larger cities, on the whole, tend toward the independent executive or ex-officio board, while the smaller seem to favor the separate appointive board, according to the findings of this Committee.[9]

[7] Manual of Laws Relating to Public Health (1922), Sec. 26 (N. Y.).

[8] Gen. Stat., Section 4643 (Minn.).

[9] Report (1923), Public Health Bulletin No. 136. United States Public Health Service, Washington, D. C.

The makeup of an ex-officio board generally varies according to the plan of government, which, in the larger cities, may be by mayor and council, mayor and city commission, city commission, city manager, city manager and commission or council; while in the towns and villages it may be by a board of selectmen, town committee or village trustees. As a rule, the health officer and the city commission comprises a board of health which is ex-officio.

Separate boards of health are usually appointed by mayors, sometimes subject to the approval of the city council. In a few instances the power to select local boards may be vested in the State health department.[10] It is a well-known legal principle that local boards of health are administrative units, neither judicial or legislative, and that their duties are governmental.[11] They may, however, have quasi-judicial and quasi-legislative functions, similar to those of the State health department, but these must be authorized by law. In other words, the power to act as agent for the State and with its authority, in the interests of the public health, may be delegated to municipal corporations. Health powers authorized by the State will be liberally construed by the courts,[12] whose proper function

[10] Davock v. Moore (1895), 105 Mich. 120, 63 N. W. 424, 28 L. R. A. 783.

McCullers v. Wake County (1912), 158 N. C. 75, 73 S. E. 816, Ann. Cas. 1913 D. 507.

[11] Davock v. Moore, cited in (10) and: Watts v. Princeton (1911), 49 Ind. A. 35, 96 N. E. 658.

Williams v. Indianapolis (1901), 26 Ind. A. 628, 60 N. E. 367.

Detroit Civil Service Commission v. Engil (1915), 184 Mich. 269, 150 N. W. 1081.

Taylor v. Philadelphia Board of Health (1855), 31 Pa. 73, 72 Am. Dec. 724.

[12] Blue v. Beach (1900), 155 Ind. 121, 56 N. E. 89, 80 Am. S. R. 195, 50 L. R. A. 64.

Covington v. Kollman (1913), 156 Ky. 351, 160 S. W. 1052, 49 L. R. A. (N. S.) 354.

Miles City v. State Board of Health (1909), 39 Mont. 405, 102 Pac. 696, 25 L. R. A. (N. S.) 589.

State v. Taft (1896), 118 N. C. 1190, 23 S. E. 970, 54 Am. S. R. 768, 32 L. R. A. 122.

it is, however, to review the actions of local health boards when they seem clearly to trespass on the constitutional rights of individuals and abuse the discretion conferred upon them.[13]

POWER TO MAKE REGULATIONS

The power to make necessary rules and regulations is usually given to local health departments by the State legislature. In the absence of specific legislation this power may generally be implied from general authority over preservation of the public health and, in fact, is an inherent right of the municipality.[14] "Health regulations are of the utmost consequence to the general welfare, and, if they be reasonable, impartial, and not against general policies of the State, they must be submitted to by individuals for the good of the public.[15] This power has often been upheld by the courts,[16] who will construe such regulations liberally except when the rights of individuals under the common law or constitutional requirements are infringed, when they may be more strictly construed.[17] They will not be set aside unless the power has been transcended.[18]

Local health regulations have the force of the State,[19] but

[13] Naccari v. Rappelet (1907), 119 La. 272, 44 So. 13, 13 L. R. A. (N. S.) 640.

State v. Withnell (1912), 91 Nebr. 101, 135 N. W. 376, 40 L. R. A. (N. S.) 898.

[14] Hengehold v. Covington (1900), 108 Ky. 752, 57 S. W. 495.

Boehm v. Mayor (1879), 61 Md. 259.

Bd. of Health v. St. Johnsbury (1909), 82 Vt. 276, 73 Atl. 581, 23 L. R. A. (N. S.) 766, 18 Ann. Cas. 496.

[15] 12 Ruling Case Law 1271, and cases cited.

[16] 29 Corpus Juris 241 ff, and cases cited. See also Chapter IV, page 50.

[17] Crayton v. Larabee (1917), 720 N. Y. 493, 116 N. E. 355, L. R. A. 1918 E. 432.

[18] Barrett v. Rieta (1922), 93 So. 636, 207 Ala. 651.

[19] Anable v. Montgomery County (1904), 34 Ind. A. 22, 71 N. E. 272, 107 Am. S. R. 173.

they must not be inconsistent with State laws.[20] Higher standards may be imposed by a city ordinance than are contained in the State law, provided that the local ordinance remains consistent with the State law.[21] A local board of health may not by vote authorize the doing of that which which a general city ordinance forbids.[22] The great criterion of all health regulations is that they must be reasonable and without discrimination. As to what is "reasonable" is for the courts to decide, but if there is a responsible body of competent professional opinion in favor of a certain regulation, it will usually be upheld.[23] The presumption is in favor of legality.[24] The board of health's own interpretation of its rules will be followed, if possible.[25] Any unreasonable regulation or one contrary to State law will be held void.[26]

[20] In re Keeny (1890), 84 Cal. 304, 24 Pac. 34.
Blue v. Beach (1900), 155 Ind. 121, 56 N. E. 89, 80 Am. S. R. 195, 50 L. R. A. 64.
New Orleans v. Stein (1915), 137 La. 652, 69 So. 43.
Rock v. Carney (1921), 216 Mich. 280, 185 N. W. 798.
Hurst v. Warner (1894), 102 Mich. 238, 60 N. W. 440, 47 Am. S. R. 525, 26 L. R. A. 484.
State v. Temple (1916), 99 Nebr. 505, 156 N. W. 1063.
Fougera v. New York (1918), 224 N. Y. 269, 120 N. E. 642, 1 A. L. R. 1467.
State v. Burdge (1897), 95 Wis. 390, 70 N. W. 347, 60 Am. S. R. 123, 37 L. R. A. 157.
Moorehouse v. Hammond (1922), 209 Pac. 883, 60 Utah 593.
Chicago v. Union Ice Cream Mfg. Co. (1911), 252 Ill. 311, 96 N. E. 872, Ann. Cas. 1912 D 675.

[21] Kansas City v. Henre (1915), 96 Kan. 794, 153 Pac. 548.
New Orleans v. Ernst (La. 1924), 99 So. 391, 155 La. 426.

[22] Kelly v. Board of Health of Peabody (Mass. 1924), 143 N. E. 39.

[23] Borden v. Montclair (1911), 81 N. J. L. 218, 80 Atl. 30.
State v. Morse (1911), 84 Vt. 387, 80 Atl. 189, 34 L. R. A. (N. S.) 190, Ann. Cas. 1913 B. 218.

[24] Smith v. St. Louis R. Co. (1901), 181 U. S. 248, 21 S. Ct. 603, 45 L. Ed. 847.

[25] Thomas v. State Board of Health (1913), 72 W. Va. 776, 79 S. E. 725, 49 L. R. A. (N. S.) 150.

[26] Mobile v. Orr (1913), 181 Ala. 308, 61 So. 920, 45 L. R. A. (N. S.) 575.
State v. Robb (1905), 100 Me. 180, 60 Atl. 874, 4 Ann. Cas. 275.

The United States Supreme Court has once again upheld in a recent case the right of the State to delegate the power to make reasonable health regulations to a municipal corporation.[27] In this case a child was excluded from public and private schools of San Antonio, Texas, for failure to be vaccinated in accordance with a city ordinance. One of the arguments presented was that the ordinances were void because they left to the board of health discretion to determine when and under what circumstances the requirement should be enforced without providing any rule by which the board was to be guided in its action and without providing any safeguards against partiality and oppression. Regarding this point Justice Brandeis said for the Court:

> Long before this suit was instituted, *Jacobson* v. *Massachusetts*, 197 U.S.11, had settled that it is within the police power of a State to provide for compulsory vaccination. That case and others had also settled that a State may, consistently with the Federal Constitution, delegate to a municipality authority to determine under what conditions health regulations shall become operative. *Laurel Hill Cemetery* v. *San Francisco*, 216 U.S.358. And still others had settled that the municipality may vest in its officials broad discretion in matters affecting the application and enforcement of a health law. *Lieberman* v. *Vandecarr*, 199 U.S. 552.

JURISDICTION

The jurisdiction of a health department obviously extends over the area embraced by the municipality and includes all persons and things within its boundaries. It does not extend beyond[28] in the absence of a State law conferring extra-territorial jurisdiction, but the board or the municipality may take action to bring about the abatement of a nuisance outside the municipal limits if the health of its inhabitants is affected thereby. Where matters arise which concern the health of several communities and they can not be satisfactorily adjusted without outside inter-

[27] Zucht v. King (1922), 260 U. S. 174.

[28] State v. Temple (Nebr. 1916), 156 N. W. 1063.

ference, it is the function of the State health department to take charge and alleviate the conditions. A local board of health may, moreover, place a quarantine against another city, according to one court decision,[29] but it can not quarantine against the county or whole State.

OFFICERS AND EMPLOYEES

The subject of health officers is such a large and important one that another chapter[30] is devoted to it. There is some distinction between "officers" and "employees," the former being exemplified by the executive health officer, while an example of the latter would be a physician or nurse employed by the board to care for indigent patients or for persons quarantined by the board. The right of a health department to employ such nurses has been upheld by the courts.[31] Health officers are appointed according to the provisions of the State law, and the power to appoint subordinates is not inherent and must also be conferred by statute, or arise by implication from State legislation.[32] The same general requirements may be said to hold good regarding removals. The cardinal feature of this subject of health officers is that it should be divorced from politics. Such matters as compensation and liabilities will be considered later.[33]

EXPENDITURES AND CONTRACTS

Budgets for health departments are usually drawn up by the health officer and submitted to the board or council for adoption, though sometimes statutes or charters require a different procedure, as the preparation by a fiscal officer.

[29] Allison v. Cash (1911), 143 Ky. 679, 137 S. W. 245.
[30] See Chapter XI, page 163.
[31] Frankfort v. Irvin (1904), 34 Ind. 280, 72 N. E. 652, 107 Am. S. R. 179.
Elliot v. Kalkaska (1885), 58 Mich. 452, 25 N. W. 461, 55 Am. S. R. 706.
Lambrie v. Manchester (1879), 59 N. H. 120, 47 Am. R. 179.
[32] In re Kent (1897), 60 N. Y. S. 627.
[33] See Chapter XI, page 166.

The health department itself cannot appropriate municipal funds for its own use, but such monies must be granted to the health department by the governing body of the municipality. They may then be used in accordance with the approved budget. Whether this can be changed or not during the course of a fiscal year depends upon the requirements of statutes, ordinances, or charters which rule on the subject, but in the absence of an authorized procedure, it can not be changed. Of course, sudden emergencies may arise in which funds may of necessity have to diverted, but such use must be ratified and usually special funds can be obtained for use during exigencies. All expenditures must be properly audited,[34] though methods vary widely. As a general proposition the auditing should by another branch of the municipal government.

In an outline for an ideal health department for a city of 100,000, Prof. C -E. A. Winslow and Dr. H. I. Harris recommend an appropriation of $1.95 per capita as the proper budget for efficient work, though this is about four times as much as was spent on the averate in 1922.[35] The amount which can be appropriated is seldom if ever restricted by legislation and the amount needed can be determined by analyzing the activities undertaken and their cost and effectiveness, according to standard ratings, such as that proposed by the American Public Health Association. The amount which can be obtained from the governing body of the community depends, as a rule, not on law, but on the ability of the health officials to "sell" the necessities of their department to the city authorities.

Contracts may be entered into between health departments and others, and this right is inherent as necessary for

[34] See Dawe v. Board of Health (1906), 146 Mich. 316.

[35] Report of the Committee on Municipal Health Department Practice. Public Health Bulletin No. 136 (1923). U. S. Public Health Service, Washington, D. C.

the proper conduct and administration of the department.[36] A health officer may not contract with himself as a private individual, however, and it is improper for a board to contract with one of its members,[37] though there may arise conditions when such a contract may be valid if properly safeguarded.[38] The health officer must have the approval of his board for all contracts unless he has blanket authority to make them, and if contracts are made without such authority they will not be good against the board unless ratified by it. A contract is an agreement made between two or more competent parties for a valuable consideration to do or refrain from doing some lawful thing.[39] An agent may be authorized to contract for his principal,[40] and the health officer is, generally speaking, the agent of his board. In fact, in Massachusetts, the executive of the board of health is officially called the "Agent." When contracts of importance are to be arranged, the health department should seek the aid of a competent lawyer, as there are many legal technicalities which may need consideration. The doctrine of prevention is an important one in public health, and it applies equally well in the domain of law. A contract properly drawn by a good lawyer may serve to prevent unnecessary and inconvenient litigation later on.

ORGANIZATION

The organization of a local health department is more of an administrative matter than a legal one, but an outline of the type of organization which is conceded most effective

[36] Frankfort v. Irvin (1904), 34 Ind. 280, 72 N. E. 652, 107 Am. S. R. 179.
Elliot v. Kalkaska (1885), 58 Mich. 452, 25 N. W. 461, 55 Am. S. R. 706.
Delano v. Goodwin (1868), 48 N. H. 203, 97 Am. Dec. 601.
Lambrie v. Manchester (1879), 59 N. H. 120, 47 Am. Rep. 179.

[37] Spearman v. Texarkana (1894), 58 Ark. 348, 24 S. W. 883, 22 L. R. A. 855.
Fort Wayne v. Rosenthal (1881), 75 Ind. 156, 39 Am. Rep. 127.

[38] St. John v. Board of Supervisors (1897), 111 Mich. 609, 70 N. W. 131.

[39] Clark on Contracts (1914). Williston on Contracts (1922).

[40] Mechem on Agency (3rd Ed. 1923).

will, nevertheless, not be out of place here. The suggestion for an ideal health department for a city of 100,000 made by Professor Winslow and Dr. Harris, which may be modified for smaller municipalities,[40a] is as follows:

1. Bureau of administration:
   a. Division of administration
   b. Division of public health education
2. Bureau of sanitation
3. Bureau of foods:
   a. Division of milk
   b. Division of foods
4. Bureau of communicable diseases:
   a. Division of epidemiology
   b. Division of tuberculous disease
   c. Division of venereal diseases
5. Bureau of child hygiene:
   a. Division of infant hygiene (including the preschool age)
   b. Division of school hygiene (including the control of working paper procedure)
6. Bureau of nursing
7. Bureau of laboratories
8. Bureau of vital statistics

DUTIES AND FUNCTIONS

While the powers of health authorities are often outlined by statutes, it may be said that they embrace everything which can be reasonably included as affecting the public health. In discussing the scope of health regulations, a well-known encyclopedia of law says, "So far as concerns the subject matter, it may be stated as a general proposition that all rules and regulations reasonably calculated to preserve health are valid and may be established by health authorities."[41]

[40a] A proposed plan for a city of 50,000 is given in "A Survey of Eighty-six Cities," American Child Health Association, New York. Issued in October, 1925.

[41] 12 Ruling Case Law 1276 and cases cited.

The independent acts of a board of health are limited to such as are essential to protect the public. State v. Speyer (1895), 67 Vt. 502, 32 Atl. 476.

The function of the health department is not only to prevent and control disease, but also to promote health.[42] Its duties, then, in a general order of importance, according to the consensus of opinion of sanitarians, are: (1) to care for the health of the child up to school age, including prenatal, maternal, infant, and pre-school care, and regulation of midwives; (2) to care for health of the child in school by weighing, physical examinations, correction of defects, sanitation, inculcation of health habits, and recreation; (3) the control of all communicable diseases, with special emphasis on tuberculosis and the venereal diseases, which are chronic, rather than acute problems; (4) sanitation of the environment, including control of food, milk, water, sewerage, and nuisances; (5) maintenance of adequate laboratory facilities; (6) collection of vital statistics, that is, births, still-births, deaths, and sometimes marriage data; and finally, (7) popular health instruction. Many of these functions overlap, of course, and there are other legitimate duties, such as industrial hygiene, mental hygiene, and the promotion of periodic health examinations, as well as special duties which arise in certain localities, as plague, malaria, or goitre control. Research is also a proper function of health departments. On account of the significance of many of these items, some of them will be considered separately in subsequent chapters.[43]

VITAL STATISTICS[44]

One public health subject on which State legislation is fairly uniform is vital statistics, as the Model Vital Statis-

[42] See The National Health Series (Twenty books) Published for the National Health Council by Funk & Wagnalls, New York (1924).

[43] See Schools, Chapter VI, page 85; Communicable Diseases, Chapter VII, page 104; Social Hygiene, Chapter IX, page 133; and Nuisances, Chapter VIII, page 121.

[44] See Falk, I. S.: The Principles of Vital Statistics (1923). See also Chapter IV, page 53.

tics Law[45] has been adopted and was in force in 1924 in all except three states. This model law provides for a central bureau of vital statistics in the State health department under direction of a registrar, who shall be responsible for the collection of birth and death reports. Local registration districts are authorized for each incorporated municipality, though two or more may be combined, if expedient. Local registrars are to be appointed and removed by the State board of Health, according to this model act, though sometimes certain local officials, as health officers or town clerks are made ex-officio registrars by State laws. Deputies are also authorized and the duties of registrars and deputies outlined.

Legal requirements of the Model Law for reporting of deaths include in general: (1) that no burial permit shall be issued until a complete and accurate death certificate has been filed; (2) that the standard death certificate shall be used; (3) that the medical certificate shall be signed by the physician in attendance at time of death; (4) that in case of death occurring without medical attendance, it shall be the duty of the undertaker to notify the local registrar; (5) that no person in charge of places of interment shall permit interment or other disposition of any body unless accompanied by a burial, removal, or transit permit. Still-births after the fifth month of gestation shall be registered both as a birth and a death, and kept separate from other births and deaths. Midwives may not sign still-birth certificates. Coffin makers are sometimes required to report sales to the State registrar, the object of this being a check on the deaths in States where funerals may be conducted without regular undertakers.

Births must be registered within ten days on the standard form. A footnote to the law suggests that they may be

[45] Supplement No. 12 (1914), U. S. Public Health Service, Washington, D. C. See also Report of Committee on Vital and Penal Statistics, National Conference of Commissioners on Uniform State Laws (1920).

required to be reported within forty-eight hours in cities. Physicians, midwives, and in their absence, parents or others in attendance must make these birth reports to the local registrar, who, in turn, reports monthly to the State registrar. The original reports are to be transmitted to the State and copies retained in the local office. Fees of twenty-five cents are to be paid to local registrars for each birth and death certificate and other fees may be levied for furnishing certified copies to individuals. The Model Law provides a penalty for failure to report properly.

Adequate vital statistics are essential for many legal purposes.[46] Birth certificates must or may be used in contion with: the right to inherit property; the establishment of legitimacy; rights of citizenship; working papers and child labor laws; school attendance; marriage, age of consent; validity of contracts of minors; liability of parents for acts of children; insurance; military service; passports; pensions; and numerous other matters. Death certificates are of legal value to prove or help prove causes of death; in connection with insurance claims; workmen's compensation; inheritance; pensions; remarriage; prosecution for illegal practise of medicine or midwifery; and various other items. It is essential that all such birth and death reports be properly and completely filled out, written in ink, made out in English, signed properly, and with no alterations or erasures. Local registrars should insist that these requirements be complied with and that all reports be prompt in accordance with law. The certificates should then be filed in an accessible but safe place.

Certified copies of birth and death reports, which are public documents, may be introduced and will be received as evidence in courts of law.[47] The registration of such

[46] Hemenway, H. B.: Birth and Death Certificates as Legal Evidence, American Journal of Public Health, January, 1921. See also Chapter IV, page 53.

[47] McKelvey on Evidence (1907). Greenleaf on Evidence (16th Ed. 1899).

vital statistics has likewise been upheld as proper by the courts.[48]

LICENSES AND PERMITS

A frequent method of control employed by municipal health departments is that of licensing. A license has been defined[49] as a formal permission from the proper authority to perform certain acts. The State, as previously mentioned[50] has the undeniable right to license, in certain instances, and it may delegate this power to municipal corporations and other political subdivisions of the State. Licenses and permits may be required by a municipality either for the purpose of regulation, in accordance with the police power, or in order to raise revenue, under the taxing power, or for both these purposes.[51] The exact extent and scope of the licensing power of a municipal health department must be ascertained in each case from State health legislation, or possibly, from the charter of the municipal corporation. As a rule, however, the licensing power includes also the right to determine the necessity for the issuance of the permit, the prescribing of conditions prerequisite to such issuance, the enforcement of the power, and, where the public health is involved, discretion as to the individuals who may be the recipients of the permits.[52]

As in the case of the exercise of other public health powers, municipal ordinances imposing licenses must be

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Vanderbilt v. Mitchell (1907), 72 N. J. Eq. 910, 67 Atl. 97, 14 L. R. A. (N. S.) 304.

[48] State v. Boone (1911), 84 Oh. St. 346, 95 N. E. 924, Ann. Cas. 1912 C. 683, 39 L. R. A. (N. S.) 1015.

Robinson v. Hamilton (1882), 60 Ia. 134, 14 N. W. 202, 46 Am. Rep. 63.

State v. Norwell (1917), 137 Tenn. 82, 191 S. W. 536.

[49] Webster's Dictionary. "A formal or official permit or permission to carry on some business or do some act which, without the license, would be unlawful," 37 Corpus Juris 167, citing cases.

[50] See Chapter IV, page 63.

[51] 37 Corpus Juris 177 and cases cited.

[52] Hanzal v. San Antonio (Texas 1920), 221 S. W. 237.

reasonable. The right to issue a permit carries with it the right to refuse to issue it for cause, and it has held that where an ordinance read to the effect that licenses "may" be issued, an aggrieved party can not compel a board of health to grant a permit as a matter of course.[53] If, however, the ordinance is not actually based on the requirements of the public health, it is an infringement on personal rights[54] a doctrine which has recently been declared with respect to the licensing of plumbers in the so-called interests of the public health.[55] As stated elsewhere[56] plumbing is only very remotely connected with the advancement of health, and modern courts should be willing to recognize this fact as in consonance with the more advanced ideas on sanitary science. Various trades and callings are, nevertheless, legitimately subject to licensing, and there are many decisions upholding the requirement of permits for dairymen and milk dealers,[57] for instance, as this calling is unquestionably of importance to the public health. The classification and even the subclassification of businesses for licensing purposes is not unconstitutional.[58] A license granted by a municipality does not excuse the maintenance of a nuisance by the licensee.[59] Licenses may be revoked for cause and if public health is in jeopardy, such action may be summary; otherwise a hearing should be held.[60]

[53] Doben v. Board of Health of Patterson (N. J. 1925), 127 Atl. 38.

[54] Wyeth v. Cambridge Board of Health (1909), 200 Mass. 474, 86 N. E. 925, 128 Am. S. R. 439, 23 L. R. A. (N. S.) 147 (undertakers).

[55] Replogle v. Little Rock (1924), 166 Ark. 617, 267 S. W. 353, 36 A. L. R. 1333.

[56] See Chapter VIII, page 131.

[57] See Milk, Chapter VI, page 98.

Bear v. Cedar Rapids (1910), 147 Ia. 341, 126 N. W. 324, 27 L. R. A. (N. S.) 1150 holds that regulation of milk does not authorize licensing, under the Iowa law.

[58] Gundling v. Chicago (1899), 177 U. S. 183, 20 S. Ct. 633, 44 L. Ed. 725.

[59] Garrett v. State (1886), 49 N. J. L. 693, 7 Atl. 29. See Chapter VIII.

[60] People ex rel Lodes v. Department of Health of New York (1907), 189 N. Y. 187, 82 N. E. 187, 13 L. R. A. (N. S.) 894.

ZONING AND HEALTH

Zoning, as the term is understood today, is the regulation by municipalities of the height, area, bulk, and courtyards of buildings in the interests of the health, safety and general welfare of the community.[61] Zoning ordinances have been passed by numerous municipalities, sometimes with a State enabling act and sometimes without. When tested in the courts they have been upheld, provided they did actually apply to the safety, health and welfare of the people and were not concerned merely with such matters as the prohibition of stores in residential districts, and provided also that there were State enabling acts which authorized the zoning ordinances.

A State enabling act should contain five necessary elements as follows:[62]

1. The grant of power to regulate height, bulk, use, yards and courts and density of population.
2. Required preliminary consideration of the needs of each district, public hearings and the comprehensive and impartial application of the regulations.
3. Requirement of more than a majority vote of the council to effect changes after written protest of property owners.
4. Provision for a board of appeals with power to vary the strict letter of the ordinance and maps in cases of practical difficulty and unnecessary hardship.
5. Enforcement and penalties.

[61] Bassett, E. M.: Constitutionality of Zoning in the Light of Recent Court Decisions. National Municipal Review, September, 1924; New York Law Journal, October 23 and 24, 1924. And cases cited. Also: New Court Decisions on Zoning, National Municipal Review, June, 1925.

[62] The U. S. Department of Commerce, Washington, D. C. has a Zoning Primer (1922), and a standard state zoning enabling act (1924).

CHAPTER VI

Some Special Powers of Health Departments

The subjects contained in this chapter are treated separately not because they are any more important than others, but because they are matters concerning which there has developed a considerable amount of legal material. The relative significance of the various phases of public health work has been indicated in other chapters.[1]

I. SCHOOL HYGIENE[2]

Administration

School hygiene forms an important part of public health administration, since reliable statistics show that approximately three out of four school children suffer from some physical defect.[3] Many States have recognized this fact and have passed special legislation dealing with the subject.[4] All of the health laws of a State or of a subdivision of it apply, of course, to school systems and must be followed by them. The actual administration of school health activities is not always vested in the health departments, but is frequently a function of boards of education or other school authorities. In fact, in a majority of the States where there is a State wide authority over school medical inspection, it comes by statute under the jurisdic-

[1] See Chapter V, page 79, and Chapter IV, page 53.

[2] See also Appendix II, page 259.

[3] See Health Education. Report of the Joint Committee on Health Problems in Education (1924). Also The Child in School by T. D. Wood, M.D., in the National Health Series of the National Health Council, New York (1924).

[4] See Synopsis of the Child Hygiene Laws of the Several States, including School Medical Inspection Laws. Public Health Bulletin No. 110 (1920; revised in 1925), U. S. Public Health Service, Washington, D. C.

tion of the State department of education. Much of the local administration of school health work is also in the hands of educational authorities. There is some difference of opinion as to which is the better executive procedure, health officials claiming that all health activities should be performed under their auspices, and educational experts asserting that the whole of the child, physical as well as mental, goes to school and should be taken care of by the school. Local statutes govern the matter, of course, and where proper and adequate facilities are employed, either system seems to work satisfactorily. There usually is coöperation between the health and school officials, and sometimes the law is administered jointly.

Supremacy of health rules

Whatever administrative conditions may be, the rules of health departments govern schools. Sometimes health regulations conflict with education laws, in which case the former must prevail, as health is more important than education. If, for instance, during an epidemic of smallpox, health authorities require all school children to be vaccinated or excluded from school, such a rule is in practically all jurisdictions superior to a compulsory education law which requires attendance.[5] In some States, such exclusion would be a good defense to an action brought against a parent for failure to send his child to school.[6] As was aptly said in an important Indiana court decision,[7]

> It is a well recognized fact that our public schools in the past have been the means of spreading contagious diseases throughout an entire community. They have been the source from which diphtheria, scarlet fever, and other contagious diseases have carried distress and death in many families. Surely, there can be no substantial argument advanced

[5] See Section on Vaccination, infra, page 89.

[6] Delaware, Minnesota, but not New York. See Vaccination, page 91.

[7] Blue v. Beach (1900), 155 Ind. 121, 56 N. E. 89, 80 Am. S. R. 195, 50 L. R. A. 64.

adverse to the reasonableness of a rule or order of health officials which is intended and calculated to protect, in time of danger, all school children, and the families of which they form part, from smallpox and other infectious diseases.

Actual power to make health regulations has been conferred on school authorities in at least one jurisdiction.[8]

The State may provide for a complete system of regulation of the erection of school buildings in the interests of the public health.[9]

Organization

The organization of school health work is usually set forth in legislation. Thus, the State department of education (or health) may be authorized to prescribe and issue rules for such activities and prepare charts, physical examination forms, and other material for carryng them out. Compulsory physical training may also be required in all of the schools of the State.[10] Local political subdivisions, as counties, municipalities, and school districts may be authorized or even required to employ school physicians, dentists, nurses, or other personnel necessary for health work.[11] Such technical persons may even be employed in the absence of specific laws, where the power may be implied from more general legislation, as by being based on the power to exclude diseased children from school.[12] While

[8] Allentown v. Wagner (1906), 214 Pa. St. 210, 63 Atl. 697.

Nether Providence School Dist. v. Montgomery (1916), 227 Pa. St. 370, 76 Atl. 75.

[9] Pasadena School Dist. v. City of Pasadena (1913), 166 Cal. 7, 134 Pac. 985, 47 L. R. A. (N. S.) 892, Ann. Cas. 1915 B 1039.

[10] See Recent State Legislation for Physical Education. Bulletin 1922, No. 1, U. S. Bureau of Education, Washington, D. C., and Fundamental Provisions in State Legislation for Physical Education (1921), National Physical Education Service, Washington, D. C.

[11] See Tobey, J. A.: Review of State Laws on Public Health Nursing. Public Health Nurse, April, 1923.

[12] Hallett v. Post Printing and Publ. Co. (1920), 68 Colo. 573, 192 Pac. 658, 12 A. L. R. 919 and note.

State ex rel Stoltenberg v. Brown (1910), 112 Minn. 370, 128 N. W. 294.

granting the power to employ physicians, nurses, etc., it has been held that a school district can not maintain a clinic at the expense of the district in excess of the necessity for providing for the health of the pupils.[13]

Closing of schools and teachers' salaries

Public places, including schools, may be closed by health authorities when the protection of the public health requires such action.[14] When a school is thus closed, the question arises as to whether a teacher is entitled to her salary for the time she can not teach. In the absence of a statute to the contrary,[15] or a special proviso in the contract of employment,[16] it is the general rule that the teacher is entitled to compensation,[17] as the epidemic is a circumstance which does not void the contract. A person who has an arrangement to transport pupils to schools can also recover under contract in some jurisdictions,[18] but not

[13] McGilvra v. Seattle School District No. 1 (Wash. 1921), 194 Pac. 817, 12 A. L. R. 913.

[14] Globe School District v. Globe Board of Health (1919), 20 Ariz. 208, 179 Pac. 55.

[15] School District v. Howard (1904), 5 Nebr. 340, 98 N. W. 666.

[16] Gregg School Twp. v. Hinshaw (Ind. 1921), 132 N. E. 586.

[17] School District v. Gardner (1920), 142 Ark. 557, 219 S. W. 11.

Phelps v. School District (1922), 302 Ill. 193, 134 N. E. 312, 21 A. L. R. 737.

Carthage v. Gray (1894), 10 Ind. A. 428, 37 N. E. 1059.

Smith v. School District (1913), 89 Kan. 225, 131 Pac. 557, Ann. Cas. 1914 D 139.

Libby v. Douglas (1900), 175 Mass. 128, 55 N. E. 808.

Dewey v. Union School District (1880), 43 Mich. 480, 5 N. W. 646, 38 Am. Rep. 206.

Board of Education v. Couch (1917), 63 Okla. 65, 162 Pac. 485, 6 A. L. R. 740.

Randolph v. Sanders (1899), 22 Tex. Civ. A. 331, 54 S. W. 621.

McKay v. Barnett (1900), 21 Utah 239, 60 Pac. 1100, 50 L. R. A. 371.

[18] Montgomery v. Board of Education (1921), 102 Oh. St. 189, 131 N. E. 497, 15 A. L. R. 715.

Crane v. School District (1920), 95 Ore. 644, 188 Pac. 712.

in others,[19] when the school is closed on account of disease. The actual facts in the case and the nature of the agreement would govern the decision as to recovery, the better rule upholding the granting of such compensation.

Physical examination of pupils

The legislature may under the police power require or authorize physical examinations of school children. In the absence of specific legislation on this subject, moreover, it has been held that a school board or board of education may adopt and enforce a regulation requiring such physical examinations as prerequisite to entrance to school.[20] Furthermore, any person who is undesirable because of physical malady or moral obloquy may be excluded from school,[21] and a report from a medical director in this effect is not libellous, but a privileged communication. In the case cited, the pupil was found to have a venereal disease, and was dismissed for that reason, an action which was upheld by the court. The right of the school board to employ suitable persons to make physical examination has also been upheld.[22]

The question of vaccination of school children is discussed in the next section (page 91).

II. VACCINATION[23]

The efficacy of vaccination as a public health measure is, of course firmly established. The legal status of this

[19] Sandry v. Brooklyn School District (N. D. 1921), 182 N. W. 689, 15 A. L. R. 719 and note.

[20] Streich v. Board of Education (1914), 34 S. D. 169, 147 N. W. 779, Ann. Cas. 1917 A. 760.

[21] Kenney v. Gurley (1923), 208 Ala. 623, 95 So. 34, 26 A. L. R. 813.

[22] State ex rel Stoltenburg v. Brown (1910), 112 Minn. 370, 128 N. W. 294.

[23] Much of this material is taken from an article by the author, "Vaccination and the Courts," Journal of the American Medical Association, August 9, 1924, and reprinted in the Journal of the American Institute of Homeopathy for September, 1924.

phase of sanitary science seems also to be fairly clear. Vaccination requirements form a valid exercise by the State of its police power and have within reasonable limitations, been almost universally upheld by the courts as a proper exercise of this police power. There are assembled below sixty-seven court decisions, representing twenty-seven States and the Federal government, in which some phase of the vaccination problem has been passed upon. These cases, decided almost entirely by courts of last resort, range over nearly a hundred years, beginning with the early decision in *Hazen v. Strong,* decided in Vermont in 1830.

In 1904, the United States Supreme Court in the case of *Jacobson v. Massachusetts* upheld the power of a state to enact compulsory vaccination laws. Some years previously this court had remarked obiter dictum, that is, on the side and not directly material to the case in question, in *Lawton v. Steele* that the state under its police power may order compulsory vaccination of children. Again, in 1922, in *Zucht v. King,* the United States Supreme Court upheld the right of the State to delegate to a municipality the power to exclude an unvaccinated child from school. In the *Jacobson v. Massachusetts* case, the Supreme Court lays particular stress on the fact that it is the function of the legislature and not the courts to determine in the first instance whether vaccination is a proper and efficacious remedy for the prevention of smallpox and the protection of the public health. In this connection, reference is made to the New York case of *Viemeister v. White,* which is quoted at length.

Like all health laws coming under the police power, the essential requirement of a valid vaccination law is that it must be reasonable. For instance, to require that any one at any time could be seized and forced to undergo compulsory vaccination would be held unreasonable by most State courts. But to require that, during an epi-

demic or threatened epidemic of smallpox, all persons who had been exposed or reliably suspected of exposure should either submit to vaccination or be quarantined would be entirely reasonable and upheld by practically all courts. Such power may either be expressly granted by the legislature, or it may be sometimes implied from more general legislation regarding the protection of the public health. If there is written legislation, such a law is fairly certain to be considered favorably.

With regard to the exclusion of unvaccinated children from schools, there is some conflict in the decisions. The weight of authority, however, upholds as a valid exercise of the police power the requirement that children be vaccinated before attending schools, and their exclusion from school if they have not been so vaccinated. When there is an emergency, as the presence of a dangerous number of cases of smallpox, such requirements, either expressly or impliedly authorized by the legislature, will usually be upheld. Such power may be delegated to school boards and health boards, as a rule. In other words, an order promulgated by a board of health to the effect that all children not vaccinated must be excluded from school on account of an actual or threatened epidemic will generally be upheld by the courts. Decisions to this effect have been rendered in Arkansas, Indiana, Michigan, Minnesota, Missouri, North Carolina, Pennsylvania, South Dakota, Texas, Utah, Vermont and Washington.

Such an order, in the absence of specific legislation, has been denied in Illinois, Kansas and Wisconsin. With the backing of legislation, exclusion of the unvaccinated from schools has been upheld in California, Connecticut, District of Columbia, Georgia, Massachusetts, New York and Ohio. In Illinois, the court admits that vaccination would be a proper requirement in the presence of a public emergency.

The following list of court decisions on vaccination is the most complete one that has ever been published. It gives

citations to reporters where the cases may be found, these references having been made as thorough as possible. This list will be of especial value to health officials who wish to locate court cases on this subject, and it will also be particularly valuable to attorneys in this connection. When cases have been already decided, the general principles laid down are to be taken as the precedents for that State. If there have been no decisions on the subject in a State, those of other States can be brought to the attention of the court trying the case as giving valuable rules of law. Even though the authorities differ somewhat in certain instances, the trend is definitely toward upholding the reasonable exercise of vaccination requirements. As Professor Freund says in his book on "Police Power," "If the protection of the public health allows quarantine, it is difficult to see why it should not justify compulsory vaccination." And that is the way the courts seem, on the whole, to look at the matter.

List of court decisions on vaccination

The following digests outline briefly only the salient feature of each case. Often, the cases contain other important principles. In using this list for practical purposes, one should consult and read the actual cases in point. The opinions may also contain valuable or important rulings on health subjects other than vaccination, and many of them are cited elsewhere in this book.

United States

Lawton v. Steel (1894), 152 U. S. 136; 38 L. Ed. 338; 14 S. Ct. 499. A decision in which the court remarked, obiter dictum (in passing, not material) that the State under its police power may order compulsory vaccination of children.

Jacobson v. Massachusetts (1904), 197 U. S. 11; 25 S. Ct. 358; 49 L. Ed. 643; 3 Ann. Cas. 765. The U. S. Supreme Court held that the state can, under its police power, enact a compulsory vaccination law, and that it is for the legislature to determine whether vaccination is the best preventive of smallpox.

Zucht v. King (1922), 260 U. S. 174. The U. S. Supreme Court held that the State may delegate to a municipality power to exclude an unvaccinated child from school.

Gillin v. Board of Public Education (1918), 250 Fed. 649. A federal court refused to allow an injunction against the ruling of a State court in Pennsylvania upholding vaccination.

Alabama

Commissioners' Court of Perry County v. Medical Society (1900), 128 Ala. 257. The medical society cannot legally restrain the commissioners from paying an agent money for vaccinating persons (even though the medical society acts as the county board of health).

Herbert v. School Board (1916), 197 Ala. 617, 73 So. 321. Under proper statutes, general vaccination may be ordered by a board of health, when deemed advisable.

Arkansas

Auten v. School Board of Little Rock (1907), 83 Ark. 431; 104 S. W. 130. It is reasonable for a board of education to require vaccination of pupils, and also evidence of such vaccination when smallpox is prevalent in a community.

California

Abeel v. Clark (1890), 84 Cal. 226; 24 Pac. 383. The legislature was within its proper powers in determining that pupils should be subjected to vaccination or excluded from school.

French v. Davidson (1904), 143 Cal. 658; 77 Pac. 663. No person not vaccinated shall be received in public schools of the state.

State Board of Health v. Board of Trustees of Watsonville School (1910), 13 Cal. A. 514; 110 Pac. 137. Until a child is vaccinated, he must be excluded from school.

Williams v. Wheeler (1913), 23 Cal. A. 619; 138 Pac. 937. Vaccination may be required before admission to an educational institution.

Connecticut

Bissell v. Davidson (1894), 65 Conn. 183; 32 Atl. 348; 29 L. R. A. 251. The requirement of vaccination is reasonable. The legislature may authorize exclusion from school of unvaccinated, even when no smallpox is prevalent.

Georgia

Morris v. City of Columbus (1898), 102 Ga. 792; 30 S. E. 850; 66 Am. S. R. 243; 42 L. R. A. 175. The legislature has the power to decide whether vaccination is worth while, and may permit muncipalities to

make ordinances to require vaccination whenever smallpox exists or may be reasonably apprehended.

Wyatt v. Rome (1898), 105 Ga. 312; 31 S. E. 188; 78 Am. S. R. 691. There is no liability to a city for impure vaccine.

Illinois

Potts v. Breen (1897), 167 Ill. 67; 47 N. E. 81; 59 Am. S. R. 262; 39 L. R. A. 152. Children cannot be excluded from school if unvaccinated, except in emergencies, and then only temporarily.

Lawbaugh v. Board of Education (1899), 177 Ill. 572. Compulsory vaccination of citizens of a municipality cannot be required by State or city except in emergencies.

Jenkins v. Board of Education (1908), 234 Ill. 422; 84 N. E. 1046; 14 Ann. Cas. 943; 17 L. R. A. (N. S.) 709. A city cannot pass an ordinance making vaccination a condition precedent to the right of education.

Burroughs v. Mortenson (1924), 143 N. E. 457. Same.

Indiana

Fort Wayne v. Rosenthal (1881), 75 Ind. 156, 39 Am. R. 127. A physician who is a member of the board of health is, on the ground of public policy, denied the right to recover for services in vaccinating school pupils, under employment by his own board.

Blue v. Beach (1900), 155 Ind. 121; 56 N. E. 89; 80 Am. S. R. 195; 50 L. R. A. 64. Exclusion of unvaccinated pupils by a local board upheld, when an epidemic is apprehended.

State ex rel Horne v. Beil (1901), 157 Ind. 25; 60 N. E. 672. School trustees must enforce vaccination as a prerequisite to school attendance when smallpox is prevalent, and in accordance with the orders of the local board of health.

Kansas

Osborn v. Russell (1902), 64 Kan. 507; 68 Pac. 60. In the absence of legislation, no child can be excluded from school by a board of education because unvaccinated.

Kentucky

Highland Park Graded School District v. McMurty (1916), 169 Ky. 457; 184 S. W. 390. *Hill v. Bickers* (1916), 171 Ky. 703; 188 S. W. 766. Both cases hold that pupils may be excluded from school, or vaccinated by a State or county board of health when there is reasonable danger from smallpox.

Maryland

County Comrs. of Allegany County v. McClintok (1883), 60 Md. 559. The county must pay a physician for vaccinating a child, according to law, whether the child was brought to him voluntarily or at his invitation.

Massachusetts

O'Brien v. Steamship Co. (1891), 154 Mass. 272; 28 N. E. 266; 13 L. R. A. 329. A passenger may be vaccinated by a ship's surgeon.

Commonwealth v. Pear (1903), 183 Mass. 242; 66 N. E. 719; 67 L. R. A. 935. The State may require vaccination or impose a penalty for failure to be vaccinated when there is reasonable apprehension of smallpox as an epidemic.

Hammond v. Hyde Park (1907), 195 Mass. 29; 80 N. E. 650. Exclusion of unvaccinated from school by school authorities in an emergency upheld, even when child has a certificate showing physical disability. (See also *Jacobson v. Massachusetts* under U. S.)

Michigan

Mathews v. Board of Education of Kalamazoo (1901), 127 Mich. 530; 86 N. W. 1036; 54 L. R. A. 736. When there is no case of smallpox in the district, it is beyond power of school board to require vaccination before admittance.

People ex rel Hill v. Board of Education (1923), 195 N. W. 95, 224 Mich 388. Upholds the exclusion of nonvaccinated children from school during existence of cases of diseases, on order of the local health authorities.

Minnesota

State ex rel Freeman v. Zimmerman (1902), 86 Minn. 353; 90 N. W. 783; 91 Am. S. R. 351; 58 L. R. A. 78. School attendance statutes must yield to the public welfare when compulsory vaccination is necessary.

Bright v. Beard (1916), 132 Minn. 375; 157 N. W. 501; Ann. Cas. 1918 A 399. Upholds exclusion from school of exposed pupils.

Missouri

In re Rebenack (1895), 62 Mo. Ap. 8. Exclusion of unvaccinated pupils from school by boards of education is not unreasonable, and is within their discretion.

State ex rel O'Bannon v. Cole (1909), 220 Mo. 697; 119 S. W. 424; 22 L. R. A. (N. S.) 986. Unvaccinated children may be excluded from schools by school boards when an epidemic is threatened, but this is a defense against the compulsory education law.

New Hampshire

Wilkinson v. Albany (1853), 28 N. H. 9. *McIntire v. Pembroke* (1873), 53 N. H. 462. Both regarding compensation for vaccinating. An agent of the town may recover from the town for vaccinating people.

New York

Matter of Walters (1895), 84 Hun. 457; 32 N. Y. S. 322. No child not vaccinated shall be received in the public schools of the State.

In re Smith (1895), 146 N. Y. 68; 40 N. E. 497; 48 Am. S. R. 769; 28 L. R. A. 820. A local health commissioner may require vaccination or quarantine only when an emergency exists to justify such action.

Viemeister v. White (1904), 179 N. Y. 235; 72 N. E. 97; 103 Am. S. R. 859; 1 Ann. Cas. 334; 70 L. R. A. 796. Children may be refused admission to the public schools until they have been vaccinated.

People v. Ekerold (1914), 211 N. Y. 386; 105 N. E. 670; Ann. Cas. 1915 C 552; L. R. A. 1915 D 223. Legislature may require vaccination as condition of admission to public schools. Such exclusion is no defense against compulsory education law.

North Carolina

State v. Hay (1900), 126 N. C. 999; 35 S. E. 459; 78 Am. S. R. 691; 49 L. R. A. 588. Upholds compulsory vaccination and exclusion of unvaccinated from school when there is a reasonable danger from smallpox.

Hutchins v. Durham (1904), 137 N. C. 68; 49 S. E. 46; 2 Ann. Cas. 340. Upholds exclusion of the unvaccinated from school, and states that a child's physical condition creates no exception to this rule.

Morgan v. Stewart (1907). 144 N. C. 425. Upholds action by health authorities against an individual who refused to be vaccinated.

Ohio

State ex rel Milhoof v. Board of Education (1907), 76 Oh. St. 297; 81 N. E. 568; 10 Ann. Cas. 879. Upholds vaccination (exclusion) rule by school board, even in the absence of smallpox.

Carr v. Board of Education 13 Oh. Dec., 10 N. P. 1903, 430. Vaccination can be required by boards of education only in an emergency.

Pennsylvania

Duffield v. Williamsport School District (1894), 162 Pa. 476; 29 Atl. 742; 25 L. R. A. 152. A reasonable order of health officers requiring vaccination before admission to school upheld. A physician's certificate may be required as evidence of such vaccination.

Field v. Robinson (1901), 198 Pa. 638; 48 Atl. 873. Before a pupil may attend school he must present a certificate from a reputable physician that he has been successfully vaccinated.

Stull v. Reber (1906), 215 Pa. 156; 64 Atl. 419; 7 Ann. Cas. 415. No person not vaccinated shall be received in the public schools of the State.

Commonwealth v. Rowe (1907), 218 Pa. 168; 67 Atl. 56.

Lee v. Marsh (1911), 230 Pa. 351, 79 Atl. 564.

Howard v. Philadelphia (1915), 250 Pa. 184; 95 Atl. 388; L. R. A. 1916, B 917. A municipality is not liable for negligence in vaccination.

Commonwealth ex rel Schaffer v. Wilkins (1921), 271 Pa. 523; 115 Atl. 887.

There are also a number of cases reported from lower courts, as follows:

Nissley v. Hummelstown, 5 Pa. D. R. 732; 18 Pa. C. C. 481 (1887).

Cousins v. Burgie, 13 Pa. D. R. 368 (1904).

Gerhard v. School District, 9 Pa. D. R. 720 (1900).

Commonwealth v. Smith, 9 Pa. D. R. 625; 24 Pa. C. C. 129 (1900).

Cousins v. Warren Borough School District, 28 Pa. C. C. 381 (1904).

South Carolina

Mathias v. Lexington County (1908), 60 S. E. 970. County must pay compensation of ten cents to a physicians for each vaccination.

Sandell v. South Carolina (1922), 104 S. C. 567; 119 S. E. 776. A suit for impure vaccine.

South Dakota

Clover v. Board of Education (1900), 14 S. D. 139; 84 N. W. 761. Exclusion of unvaccinated from school by school boards upheld. Presentation of certificate showing vaccination may be required.

Texas

Mo., K. & T. R. R. Co. v. Wood (1902), 68 S. W. 802. Failure to be vaccinated is not contributory negligence in a suit for damages against the railroad on account of communication of smallpox to an employee.

McSween v. Board of School Trustees of Fort Worth (1910), 60 Tex. Civ. A. 270; 129 S. W. 206. An order excluding unvaccinated pupils from school upheld as proper on the part of the school authorities in preventing an epidemic.

Waldschmidt v. New Braunfels (1918), 207 S. W. 303. Same.

Utah

State ex rel Cox v. Board of Education (1900), 21 Utah 401, 60 Pac. 1013. Exclusion of unvaccinated from schools by regulation of the board of health upheld, even without specific legislation.

Vermont

Hazen v. Strong (1830), 2 Vt. 427. Vaccination upheld. Power of selectmen extends to incurring expense of vaccinating inhabitants when exposed, even though there are no cases in town.

Washington

State ex rel McFadden v. Shorrock (1909), 55 Wash. 208, 104 Pac. 214. Defines "successful vaccination" as that when the customary reaction occurs or when no reaction follows after three attempts.

State ex rel Lehman v. Partlow (1922), 205 Pac. 420; 119 Wash. 316. An order of the health officer requiring vaccination as prequisite to admission to public schools in view of prevalence of smallpox was upheld as authorized under general State health legislation.

West Virginia

Thomas v. Mason (1894), 39 W. Va. 526; 20 S. E. 580; 26 L. R. A. 727. Town must pay for medical treatment.

Wisconsin

State ex rel Adams v. Burdge (1897), 95 Wis. 390; 70 N. W. 347; 60 Am. S. R. 123; 37 L. R. A. 157. Exclusion of the unvaccinated from school by rule of the state board of health is not lawful in the absence of legislation.

General references[24]

12 R. C. L. 1289
24 R. C. L. 631
12 C. J. 914
17 L. R. A. (N. S.) 709 (note)
1 Ann. Cas. 337 (note)
21 Cyc. 393
35 Cyc. 1117

III. MILK

Milk is one of the most important and necessary of foods, but it is also one which, if not properly supervised and cared for, offers many opportunities for the dissemination of communicable diseases. The control of milk

[24] See also, Kerr, J. W.: Vaccination: An Analysis of the Laws and Regulations Relating Thereto in Force in the United States, Pub. Health Bull. 52, August, 1919, U. S. Public Health Service, Washington, D. C.

supplies, is, therefore, a legitimate function of health departments, who may and should set standards and impose requirements for purity of milk supplies and products. Suggested standards for milk have been published by the United States Public Health Service,[25] and the United States Department of Agriculture has likewise issued a number of bulletins on this subject.[26]

On few public health matters is there such unanimity of opinion by courts of last resort as on milk control.[27] The United States Public Health Service has issued a reprint giving a list of 121 court decisions handed down by the courts of last resort of 31 states and the Federal government,[28] which uphold various aspects of milk control. The Unites States Supreme Court has held, for instance, that milk regulations form a valid exercise of the police power[29] and that the power to control such supplies may be delegated by the State to municipal authorities and to boards of health.[30] This court has also held that a city may prevent impure milk from being transported into its territory[31] and that impure milk which is brought in may be confiscated and destroyed.[32] The summary seizure and destruction of milk has also been sustained by a number of State courts.[33]

[25] Reprints No. 386 (1917) and No. 634 (1921). See (36) below.

[26] See Price List on Animal Industry, U. S. Superintendent of Documents, Washington, D. C. (reissued periodically).

[27] See 18 American Law Reports 236 (1922).

[28] Tobey, J. A.: The Legal Aspects of Milk Control. Reprint No. 939 (1924), U. S. Public Health Service, Washington, D. C.

[29] Fischer v. St. Louis (1904), 194 U. S. 361, 48 L. Ed. 1018.

St. John v. New York (1905), 201 U. S. 633, 50 L. Ed. 896, 26 S. Ct. 554, 5 Ann. Cas. 909.

[30] Lieberman v. Van de Carr (1905), 199 U. S. 552, 50 L. Ed. 305, 26 S. Ct. 144.

[31] Reid v. Colorado (1902), 187 U. S. 137, 23 S. Ct. 92, 47 L. Ed. 108.

[32] Adams v. Milwaukee (1913), 228 U. S. 572, 57 L. Ed. 971, 33 S. Ct. 610.

[33] Deems v. Baltimore (1894), 80 Md. 164, 30 Atl. 648, 26 L. R. A. 541, 45 Am. S. R. 201.

Shivers v. Newton (1883), 45 N. J. Eq. 469.

The regulation and inspection of dairies has been upheld,[34] and it is proper for municipalities to impose requirements on dairies which are outside their own borders.[35] In fact, many State laws or sanitary codes govern this matter of milk control, thus insuring uniformity throughout the State. In some instances, as in New York, model milk codes have been prepared by the State for the use of municipalities.[36] The requirement that cattle must have the tuberculin test has been supported in several leading cases.[37] The licensing of milk dealers, dairies, and sellers has been held valid[38] but such licensing must not be discriminating, as by requiring that only owners of vehicles used to sell milk should be licensed.[39] An act applying

[34] Creaghan v. Baltimore (1918), 132 Md. 442, 104 Atl. 180.
Walton v. Toledo (1902), 23 Oh. C. C. 547.
Hill. v. Fetherolf (1912), 236 Pa. 70, 84 Atl. 677.

[35] Adams v. Milwaukee, see (32).

[36] See Frank, L. C.: A State-wide Milk Sanitation Program, Reprint No. 971 (1924), U. S. Public Health Service (Gives text of a standard municipal milk ordinance used in Alabama). Also Inspection of Milk Supplies. Dept. Circ. No. 276 (1923), U. S. Department of Agriculture, Washington, D. C., contains a model ordinance.

[37] Adams v. Milwaukee (1918), 228 U. S. 572, 57 L. Ed. 971, 33 S. Ct. 610.
New Orleans v. Charouleau (1908), 121 La. 890, 46 So. 911, 18 L. R. A. (N. S.) 368, 126. Am. S. R. 332, 15 Ann. Cas. 46.
Nelson v. Minneapolis (1910), 112 Minn. 16, 127 N. W. 445, 29 L. R. A. (N. S.) 260.
State v. Nelson (1896), 66 Minn. 166, 68 N. W. 1066, 34 L. R. A. 318, 61 Am. S. R. 399.
Hawkins v. Hoye (1914), 108 Miss. 282, 66 So. 741.
St. Louis v. Liessing (1905), 190 Mo. 464, 89 S. W. 611, 1 L. R. A. (N. S.) 918, 109 Am. S. R. 774, 4 Ann. Cas. 112.
Borden v. Montclair (1911), 81 N. J. L. 218, 80 Atl. 30.

[38] Niles v. Smith (Fla. 1917), 57 So. 426, 62 Fla. 93.
Newport v. French (1916), 169 Ky. 174, 183 S. W. 532.
State v. McKinney (1904), 29 Mont. 375, 74 Pac. 1095, 1 Ann. Cas. 579.
Cofman v. Outerhous (1918), 40 N. D. 390, 168 N. W. 826, 18 A. L. R. 219.
Littlefield v. State (1894), 42 Nebr. 223, 60 N. W. 724, 28 L. R. A. 588, 47 Am. S. R. 697.

[39] Read v. Graham (1907), 31 Ky. L. R. 569, 102 S. W. 860.

only to those selling in cities, towns, and villages has been held not to deny equal protection of the laws.[40]

The constitutionality of requirements that all milk should be pasteurized or certified has been before the courts of four States in five notable decisions, in each of which these requirements have been upheld as valid and proper.[41] Proper receptacles, such as sealed bottles may be required, as well as special labels. As was well remarked in one case,[42] "Viewing the matter in the light of the accepted theories of science at the present time, a regulation of a local board of health requiring milk to be handled in sealed transparent bottles is neither unreasonable nor oppressive."

Many cases concerning the adulteration of milk have arisen and been decided, as this matter has an important economic as well as public health bearing.[43] In general, prohibition of the adulteration of milk and and milk supplies has been upheld, and the fixing of reasonable standards pronounced valid.

IV. FOODS AND DRUGS

Besides milk and water, there are many other foods which have an important public health significance. The science of nutrition is, of course, an essential feature of personal hygiene. The three prime requisites of correct nutrition are pure food, properly selected, and properly prepared, though it is only with the first of these, that is, the sanita-

[40] State v. Broadbelt (1899), 89 Md. 565, 43 Atl. 771, 73 Am. S. R. 201, 45 L. R. A. 433.

[41] Koy v. Chicago (1914), 263 Ill. 122, 104 N. E. 1104, Ann. Cas. 1915 C 67.

People v. McGowan (1921), 195 N. Y. S. 286.

Moll v. City of Lockport (1922), 194 N. Y. S. 250.

State v. Edwards (1924), 121 S. E. 444, 187 N. C. 259.

Pfeffer v. Milwaukee (Wis. 1920), 177 N. W. 850, 10 A. L. R. 128.

[42] Covington v. Kollman (1913), 160 S. W. 1052, 156 Ky. 351, 49 L. R. A. (N. S.) 354.

State v. Stokes (1916), 98 Atl. 294, 91 Conn. 67.

[43] See 18 American Law Reports 235 (1922).

tion and quality of foods that public health law has to deal. Much of the regulation of foodstuffs is based on economic rather than public health reasons.

The State, having the power to control foods and drugs,[44] may delegate to muncipalities and other subdivisions of the State government the authority to make regulations on this subject and these rules, whenever reasonable, will be upheld by the courts.[45] It is seldom, in fact, that food laws have ever been held invalid.[46] Summary seizure and destruction of impure foods, according to law, has been pronounced proper[47] and the United States Supreme Court has upheld the destruction of foods in cold storage, in conformity to a municipal ordinance.[48]

Requirements that foods be protected from flies and dust are sound,[49] as are also provisions for the medical examination of food handlers.[50] Licensing of dealers in foodstuffs is proper, and inspection before permission to sell is granted may be required. Foods may be seized and examined in the interests of public health or welfare, and such action is not deprivation of property without due process of law.

In addition to summary condemnation of unwholesome or impure food, which is unquestionably a health measure,

[44] See Chapter IV, page 59.

[45] Norfolk v. Flynn (1903), 101 Va. 473, 44 S. E. 717, 99 Am. S. R. 918, 62 L. R. A. 771 (milk).

State v. Normand (1913), 76 N. H. 541, 85 Atl. 899, Ann. Cas. 1913 E 996.

[46] 11 Ruling Case Law 1103.

[47] Munn v. Corbin (1896), 8 Colo. A. 113, 44 Pac. 783.

Raymond v. Fish (1883), 51 Conn. 80, 50 Am. R. 3.

Williams v. Divenberg (1911), 145 App. Div. 93, 129 N. Y. S. 473.

[48] North American Cold Storage Co. v. Chicago (1908), 211 U. S. 306, 29 S. Ct. 101, 53 L. Ed. 195, 15 Ann. Cas. 276.

[49] State v. O'Connor (1911), 115 Minn. 339, 132 N. W. 303, Ann. Cas. 1912 D 955, 35 L. R. A. (N. S.) 1112.

State v. Normand (see 45 above).

[50] Ex parte Vaughan (1923), 93 Tex. Cr. A. 112, 246 S. W. 373.

Langley v. City of Dallas (Tex. 1923), 252 S. W. 203.

fines or even imprisonment may be imposed for the violation of food laws, ordinances, or regulations made in conformity to law. If the indictment or information in a criminal prosecution charges the offense in the language of the statute, this is sufficient.[51]

Matters of imitation, adulteration, misbranding, or other frauds may be legally supervised and dealt with, but these are obviously economic problems rather than public health ones and should receive attention from other than health authorities, who generally have enough to do without going outside of their own fields of action.

Civil liability for impure foods is discussed elsewhere.[52]

[91] 11 Ruling Case Law 1131. The article on "Food" here, beginning on page 1094 is an excellent one.

[92] See Chapter XII, page 186.

CHAPTER VII

The Control of Communicable Diseases

WHAT THEY ARE

A communicable disease is any disease which can be communicated by one person to another. Thus, smallpox, diphtheria, typhoid fever, pneumonia, and the like are communicable diseases, whereas cancer, Bright's Disease, diabetes, and similar affections are not communicable, but are organic diseases. The words "contagious," or "infectious" are also used to describe these diseases, but these terms are somewhat limited in scope, "contagious" referring particularly to maladies transmitted from man to man, or animal to man and "infectious" being applied to those diseases, the infecting agent of which has its natural habitat outside of the bodies of men or animals. Both are communicable; but not all communicable diseases are both contagious and infectious. The distinction is not of vast importance and a federal court has recently upheld a regulation of the United States Public Health Service which declared the word "contagious" as synonymous with "communicable."[1] The court remarked in this case, "the regulation making 'contagious' equivalent to 'communicable' seems pretty broad; but, assuming that the regulation be given a reasonable construction, the court is not prepared to say that it is invalid." It is preferable to use the more correct term wherever possible, but in the the following discussions it will be necessary to employ the language as used by the courts, whether strictly accurate or not.

A list of the more important communicable diseases, as

[1] Ex parte Liang Buck Chew (1924), 296 Fed. 182.

given by a committee of the American Public Health Association,[2] is as follows:

Actinomycosis
Acute infectious conjunctivitis
Anchylostomiasis (hookworm)
Anthrax
Cerebrospinal meningitis (epidemic)
Chicken pox
Cholera
Dengue
Diphtheria
Dysentery (amebic)
Dysentery (bacillary)
Favus
German measles
Glanders
Gonorrhea
Leprosy
Malaria
Measles
Mumps
Paratyphoid fever
Plague
Pneumonia (acute lobar)
Poliomyelitis
Rabies
Rocky Mountain spotted or tick fever
Scarlet fever
Septic sore throat
Smallpox
Syphilis
Tetanus
Trachoma
Trichinosis
Tuberculosis (pulmonary)
Tuberculosis (other than pulmonary)
Typhoid fever
Typhus fever
Whooping cough
Yellow Fever

METHODS OF CONTROL

The methods of control of these communicable diseases are outlined by this same committee under three general headings:

A. The infected individual and his environment
- *a.* Recognition of the disease
- *b.* Isolation
- *c.* Immunization
- *b.* Quarantine
- *e.* Concurrent disinfection
- *f.* Terminal disinfection

B. General measures

Including such matters as popular health instruction, food inspection and sanitation, location and control of healthy carriers, protection of water supplies, general sanitation, etc.

[2] The Control of Communicable Diseases, Reprint No. 436 (1923 edition), U. S. Public Health Service, Washington, D. C.

C. Epidemic measures
Special activities during unusual prevalence of a disease

Each of these matters will be briefly discussed in its legal aspects. The fact that practically all communicable diseases are preventable and that for most of them proven methods have been developed to achieve such prevention, is the underlying basis for modern legal pronouncements on the subject. The law has, fortunately, kept fairly adequate pace with the advancement of medical and sanitary science.

SOURCE OF AUTHORITY

Control over communicable diseases, as an important function of the public health, comes under the police power of the State, as previously described.[3] The Federal Government is concerned with disease only as it affects or depends upon foreign and interstate commerce, to deal with which various quarantine and inspection laws and regulations have been passed.[4] The power of the States to legislate against communicable diseases has frequently been upheld by the courts,[5] as have also statutes delegating the power to make regulations on the subject to local health authorities.[6] Actual administrative control over diseases is gen-

[3] See Chapter III, page 31. Also 8 American Law Reports 836.

[4] See Laws Pertaining to the United States Public Health Service (1922), Supplement 41, U. S. Public Health Service, Washington, D. C.

[5] Forbes v. Escambia Board of Health (1891), 28 Fla. 26, 9 So. 862, 13 L. R. A. 549.
Highland Park v. McMurtry (1916), 169 Ky. 457, 184 S. W. 390.
Haverty v. Bass (1876), 66 Me. 71.
Brown v. Murdock (1885), 140 Mass. 314, 3 N. E. 208.
Spring v. Hyde Park (1884), 137 Mass. 554, 50 Am. S. R. 334.
In re Smith (1895), 146 N. Y. 68, 40 N. E. 497, 48 Am. S. R. 769, 28 L. R. A. 820.
Kirk v. Aiken (1909), 83 S. C. 372, 65 S. E. 387, 23 L. R. A. (N. S.) 1138.

[6] People v. Tait (1913), 261 Ill. 197, 103 N. E. 750.
Blue v. Beach (1900), 155 Ind. 121, 56 N. E. 89, 80 Am. S. R. 195, 50 L. R. A. 64.
Ex parte McGee (1919), 105 Kan. 574, 185 Pac. 14.

erally carried out under local jurisdiction, in accordance with State laws and such supplementary local ordinances or regulations as may be necessary. During emergencies or when more than one municipality is involved in the spread of disease, the State health department, which has jurisdiction over the entire State,[7] may usually enter local territory and assume control.

LOCAL ADMINISTRATIVE CONTROL

The proposal of the American Public Health Association,[8] for an ideal health department for a city of 100,000 recommends a bureau of communicable diseases under the direction of a full-time physician, and divisions of epidemiology, tuberculous disease, and venereal diseases, the two latter having full-time directors. In addition, inspectors, nurses, social workers, and clerks would be needed, with a total budget of about $65,000 annually. As a matter of fact, it was found from a survey of 63 large cities that the average expenditure for communicable disease control was only 8 cents per capita, or about 15 per cent of the total expenditure for health service. In smaller communities, the work of controlling disease usually is done directly under the supervision of the health officer, often with the assistance of

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Hengehold v. Covington (1900), 108 Ky. 752, 57 S. W. 495, 22 Ky. L. 462.

Train v. Boston Disinfecting Co. (1887), 144 Mass. 523, 11 N. E. 929, 59 Am. S. R. 113.

Hurst v. Warner (1894), 102 Mich. 238, 60 N. W. 440, 47 Am. S. R. 525, 26 L. R. A. 484.

St. Louis v. McCoy (1853), 18 Mo. 238.

State ex rel McBride v. Superior Court (1918), 103 Wash. 409, 174 Pac. 973.

[7] Except in one or two special instances where a charter vests exclusive jurisdiction over metropolitan health matters in the city board of health, as in New York City.

[8] Report of the Committee on Municipal Health Department Practice (July, 1923) Public Health Bulletin No. 136. U. S. Public Health Service, Washington, D. C.

public health nurses or sanitary inspectors. The courts in one State have held that a common council may engage special persons to fight epidemics and would thereupon be liable for their services.[9] A board of health may not, however, place the entire treatment of an individual having a communicable disease upon the health officer, but must permit such individual to engage his own physician for personal services.[10]

The respective duties of State and local health authorities in the control of communicable diseases have been well summarized in a bulletin[11] of the United States Public Health Service, as follows:

Duty of State health authorities. The duties assigned by law to State health authorities in controlling communicable diseases, are:

1. To maintain a general supervision over the enforcement of health laws.
2. To issue regulations for the prevention of the spread of communicable diseases.
3. To investigate outbreaks of disease.
4. To make laboratory diagnoses and studies.
5. To enforce interstate quarantine, intrastate quarantine, and household quarantine.
6. To distribute serums, vaccines, etc.
7. To distribute educational literature.
8. To coöperate with Federal and local health authorities.

Duty of local health authorities. The chief duties imposed by law on local health authorities are:

1. To enforce the health laws and the regulations of the State board of health.
2. To adopt regulations of their own for the control of disease, this provision being in some States permissive and in others mandatory.
3. To investigate cases of disease and make regular sanitary inspections.

[9] Rae v. Flint (1883), 51 Mich. 526, 16 N. W. 887.
Elliot v. Kalkaska (1885), 58 Mich. 452, 25 N. W. 461, 55 Am. S. R. 706.

[10] Trabue v. Todd County (1907), 125 Ky. 809, 102 S. W. 309.
Ex parte Brooks (1919), 212 S. W. 956, 85 Tex. Cr. A. 397.

[11] Communicable Diseases: An Analysis of the Laws and Regulations for the Control Thereof in Force in the United States. Public Health Bulletin No. 62 (1913), U. S. Public Health Service, Washington, D. C.

4. To make to the State health authorities immediate reports of cases of communicable diseases and periodical reports on local sanitary conditions.

5. To enforce interstate quarantine, intrastate quarantine, and household quarantine.

6. To assist quarantined persons.

7. To furnish vaccines, serums, etc.

8. To perform terminal disinfection.

9. To attend conferences with the State board of health for concerted measures in the suppression of disease..

REPORTING

Prompt notification of the existence of a communicable disease is one of the first requisites of adequate control. Reporting requirements are generally set forth in State laws or regulations made under that authority. A model State law for morbidity reports was prepared some years ago by a committee of the Conference of State and Provincial Health Authorities of North America,[12] but has been adopted in only a few States. This proposed act gives a list of "infectious," occupational and venereal diseases to be reported and also includes a standard notification blank. It is desirable, of course, that there be a uniform procedure for disease reporting throughout a State. It seems to be best, however, to leave to the State health department the power to determine what diseases should be reported. Thus, a list of reportable diseases may form part of the State sanitary code and be added to by resolution as necessity arises. Methods of reporting and penalties for failure to do so should also be set forth by the State.

Municipal requirements regarding reporting have been suggested in the Model Health Code prepared by a committee of the American Public Health Association.[13] This

[12] Model State Law for Morbidity Reports. Reprint No. 285 (1915), U. S. Public Health Service, Washington, D. C. And see Lloyd, B. J.: A Plan to Establish a Morbidity Registration Area. U. S. Public Health Reports, July 24, 1925.

[13] Reprint. American Public Health Association, New York.

code states that reports of certain communicable diseases, a list of which is given, should be made by physicians or other persons having knowledge of them, to the health officer within six hours of discovery. Such reports should be made preferably by telephone, though specimens sent to the laboratory for examination and accompanied by data may also serve as reports of cases.

The requirement that diseases dangerous to health be reported has been upheld by the courts on a number of occasions.[14] A Christian Scientist has been held not to be a physician within the meaning of statutes requiring physicians to make these reports.[15] The report of a communicable disease to the health authorities is no violation of the confidential relationship between physician and patient[16] and the former can not conceal a condition which, if unrecognized, may be detrimental to the public as a whole.[17] A physician who fails to report communicable diseases may not be penalized or have his license revoked for unprofessional conduct where a local ordinance on this subject of reporting is inconsistent with the State law, according to a recent decision,[18] though the court seems to have been rather over-technical and excused the ruling somewhat by saying,

. . . . we are very reluctant to interfere with the orders of the boards of health in carrying into effect the rules, regulations, and ordi-

[14] Davis v. Rodman (Ark. 1921), 227 S. W. 612, 13 A. L. R. 1459.
State v. Wordin (1888), 56 Conn. 216, 14 Atl. 801.
Johnson v. D. C. (1906), 27 App. D. C. 259.
Chicago v. Craig (1913), 172 Ill. A. 126.
Robinson v. Hamilton (1882), 60 Ia. 134, 14 N. W. 202. 46 Am. Rep. 63.
Smythe v. State (1921), 124 Miss. 454, 86 So. 870.
Kansas City v. Baird (1902), 92 Mo. A. 204.
People v. Brady (1892), 90 Mich. 459, 51 N. W. 537.
People v. Shurly (1902), 131 Mich. 177, 91 N. W. 139.
[15] Kansas City v. Baird (1902), 92 Mo. A. 204.
[16] People v. Shurly (1902), 131 Mich. 177, 91 N. W. 139.
[17] Simonson v. Swenson, (Nebr. 1920), 177 N. W. 831 (syphilis).
[18] Moorehouse v. Hammond (Utah 1922), 209 Pac. 883.

nances relating to the prevention of disease and the protection of the public health. In enforcing such rules, regulations, and ordinances the boards of health are exercising the highest function of government, and they should not be interfered with unless it is clear that they have exceeded the bounds of their authority. Where, however, as here, the rights of a citizen have been invaded and he has been condemned without authority of law and has had his license to practice his profession revoked we have no alternative save to correct the wrong by annulling and setting aside the order by which his privileges have been denied him.

This case is a striking example of the necessity of care in drafting adequate and proper reporting ordinances.[19]

LABORATORIES

In order to assist in the diagnosis of communicable diseases, laboratory facilities may be needed. The State may establish a central laboratory in connection with the State health department, or in some instances, the State university; and if necessary, may have branch laboratories elsewhere in the State. Local statutes may govern the establishment and administration of such laboratories and in at least one State, municipalities over 20,000 population are prohibited from sending specimens to the State laboratory, being required to have their own local facilities in order to secure such diagnostic service. The right of municipalities to establish laboratories has been upheld by a court in Alabama,[20] which stated in the course of its opinion, "The court discovers in the health and quarantine laws of the State no expressed or implied purpose to deny to a municipal corporation the authority to procure for the use of its officers and people in the administration of their affairs expert knowledge of things which may affect the safety, health, and comfort of the community."

[19] See also Chapter XIII, page 189, on Legislation and How to Draft It.
[20] State ex rel Sholl v. Duncan (Ala. 1909), 50 So. 265.

ISOLATION AND QUARANTINE

Isolation has been defined[21] as the separating of persons suffering from a communicable disease, or carriers of the infecting organism, from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent to susceptible persons. Quarantine is thus defined:[22] The limitation of freedom of movement of persons or animals who have been exposed to communicable disease for a period of time equal to the incubation period of the disease to which they have been exposed. The incubation period is the time between the date of infection and the first symptoms of the disease. A list of maximum incubation periods is given in the Model Health Code of the American Public Health Association. The difference between isolation and quarantine, as suggested above, is that the former applies to the limitations of the movement of the known sick or carriers, while the latter refers to exposed or contact individuals. The courts have used the words interchangeably, but these distinctions are, nevertheless, of value. An example of a definition given by a court is the following: "To quarantine persons means to keep them, when suspected of having contracted or been exposed to an infectious disease, out of a community, or to confine them in a given place therein, and to prevent intercourse between them and the people generally of such community."[23]

The right of health officials to restrain the movements of persons and animals who are dangerous to the public health is an important phase of the police power and one often upheld by the courts.[24] As was said in a leading case,

[21] Report of the Committee of the American Public Health Association on the Control of Communicable Diseases. Reprint No. 436 (1923), U. S. Public Health Service, Washington, D. C.

[22] Same.

[23] Daniel v. Putnam County (1901), 113 Ga. 570, 38 S. E. 980, 54 L. R. A. 292. See also infra page 117.

[24] See 29 Corpus Juris 252 and cases cited.
Also 47 American State Reports 541 and 80 Am. S. R. 227.

"Quarantine laws are a familiar exercise of the police power of the State. Their enactment is within its lawful province, and the making of regulations for their enforcement has always been entrusted to subordinate boards."[25] Health officials must exercise the highest diligence, however, in using this power,[26] and arbitrary or unreasonable measures will not be sustained.[27] The quarantine of a whole house has been upheld as reasonable, even though only one case of disease had occurred there.[28]

No particular formality is required in imposing isolation or quarantine, as a rule, methods being left to health officials. It has been held, though, that where the law provides for quarantine to be declared by municipal authorities on written notice that contagious disease exists and no such notice has been given, the local board has no authority to enforce quarantine.[29] By far the better rule, obviously, is that health officials may enforce isolation or quarantine at any time when the protection of the public health so demands, regardless of technicalities, and this is the view taken by most courts and expressed in much legislation. Placards may be placed where communicable disease exists, in accordance with laws or regulations.[30]

State v. Racskowski (1913), 86 Conn. 677, 86 Atl. 606, Ann. Cas. 1914 B 410, 45 L. R. A. (N. S.) 580.

In re Vaughan (Calif, 1922) 209 Pac. 353.

[25] Train v. Boston Disinfecting Co. (1887), 144 Mass. 523, 11 N. E. 929, 59 Am. R. 113.

[26] Kirk v. Aiken Board of Health (1909), 83 S. C. 372, 65 S. E. 387, 23 L. R. A. (N. S.) 1138.

[27] State v. Kirby (1903), 120 Ia. 26, 94 N. W. 254.

Hurst v. Warner (1894), 102 Mich. 238, 60 N. W. 440, 47 Am. S. R. 525, 26 L. R. A. 484.

Taylor v. Adair County (1905), 119 Ky. 374, 84 S. W. 299.

Hickman County v. Scarborough (1912), 150 Ky. 1, 49 S. W. 1116.

See also Chapter XII, page 175, on Liability and Chapter IX page 136, on Social Hygiene.

[28] Highland Park v. Schlute (1900), 123 Mich. 360, 82 N. W. 62.

[29] State v. Kirby (1903), 120 Ia. 26, 94 N. W. 254.

[30] Brown v. Murdock (1885), 140 Mass. 323, 3 N. E. 208.

Memphis v. Smythe (Tenn. 1900), 58 S. W. 215.

Ex parte Culver (Calif. 1921), 202 Pac. 661.

REMOVAL TO HOSPITALS

Whether persons suffering from communicable diseases may be removed to isolation hospitals or not is usually determined by the statutes. As a general proposition, any person who is dangerous to public health and who can not be properly and safely cared for at home or elsewhere may be removed by health officials to a suitable isolation hospital.[31] Such procedure is suggested in the Model Health Code. Due care must be employed in moving such patients and also in providing proper quarters for them.[32] A warrant is usually unnecessary.[33] A health officer can not be compelled to remove a patient to an isolation hospital when no funds are available for such removal.[34] The operation of a hospital for communicable diseases within its limits can not be prohibited by a municipality under its police power, as this would be unreasonable.[35] An injunction has, however, been granted against a pesthouse in a residential community where this was likely to be a nuisance.[36]

QUARANTINE AND HABEAS CORPUS

Whenever the liberty of a person is subject to restraint, as by arrest, imprisonment, quarantine, or other detention, that individual is entitled to have such restriction of his liberty reviewed and passed upon by the courts. This is accomplished by the writ of habeas corpus,[37] a privilege which is very old and precious and even antedates the magna charta (1215 A.D.) This writ has often been invoked by

[31] Hengehold v. Covington (1900), 108 Ky. 752, 57 S. W. 495, 22 Ky.L. 462.

[32] Aaron v. Broiles (1885), 64 Tex. 316.

[33] Haverty v. Bass (1876), 66 Me. 71.

[34] Gould v. Keller (S. D. 1915), 154 N. W. 649.

[35] San Diego Tuberculosis Association v. East San Diego (Calif. 1921), 200 Pac. 393, 17 A. L. R. 513 (and note).

[36] Birchard v. Board of Health of City of Lansing (1918), 169 N. W. 901, 204 Mich. 284.

[37] See Bailey on Habeas Corpus (1913).

persons who have been isolated, quarantined, or otherwise subjected to detention by health officials. The right to have the validity of such restriction of liberty reviewed by the courts has been upheld by them in a number of decisions,[38] but if the court finds that the quarantine or other detention was justified, the writ will be denied,[39] and a higher court will restrain a lower one from granting the writ where the protection of the public health warrants the isolation.[40] Furthermore, a local ordinance providing that a person infected with venereal disease, not a prostitute, *may* be released on bond does not make such release mandatory, but only if the judgment of the city physician the welfare of the public will not suffer.[41] Many of the later cases dealing with quarantine and habeas corpus have involved the venereal diseases.[42]

EXPENSES OF ISOLATION AND QUARANTINE

The supplying of medicines, food, and other commodities to quarantined persons may be a duty of the municipality, depending upon the statutes.[43] In the absence of laws on the subject, no supplies would be furnished except to the indigent.[44] Where a municipal and county health department was jointly maintained, both the county and the municipality would be liable for quarantine expenses.[45]

[38] Ex parte Hardcastle (1919), 84 Tex. Cr. A. 463, 208 S. W. 531.
Ex Parte Travers (1920), 32 Cal. A. 1035.
Dowling v. Hardin (Ala. 1921), 88 So. 217.

[39] Barmore v. Robertson (1922), 302 Ill. 422, 134 N. E. 815, 22 A. L. R. 835.
Ex parte Caselli (Mont. 1922), 214 Pac. 364.
Ex parte Irvin (Ohio 1923), 139 N. E. 204.

[40] State ex rel McBride v. Superior Court for King County (Wash. 1918), 174 Pac. 973.

[41] Ex parte Irby, Ex parte Hollowell (Kan. 1923), 215 Pac. 449, 450.

[42] See Chapter IX, page 138, on Social Hygiene.

[43] See 29 Corpus Juris 272 and cases cited.

[44] Dodge County v. Diers (1903), 69 Nebr. 361, 95 N. W. 602, 15 Ann. Cas. 232.

[45] Pulaski County v. Somerset (1907), 30 Ky. L. 387, 98 S. W. 1022.

A municipality is not liable for negligent care given to persons in an isolation hospital.[46]

DISINFECTION

By disinfection is meant the destruction of the vitality of pathogenic microörganisms by chemical or physical means.[47] The modern procedure is to employ efficient methods of concurrent disinfection, that is, during the course of the disease, rather than to use terminal disinfection, as by fumigation, after the disease is over. There have been numerous court decisions regarding terminal disinfection in the past, but it is not worth while to cite any of them here, in the light of the modern conception as to the futility of such methods. Concurrent disinfection may properly be required by regulation or ordinance.

CARRIERS

A carrier is a person who, although apparently healthy, harbors the microörganisms which cause disease and by means of his discharges, or otherwise, may spread the disease. Since carriers are dangerous to the public health, appropriate measures may be taken by health officials to prevent dissemination of disease by them. This power has been upheld in a recent leading case,[48] in which the restraint by the health commissioner of Chicago of a boarding house keeper who was spreading typhoid fever, was sustained. A quotation from this remarkable opinion, which is a very clear exposition of public health law, will be worth-while:

> It is not necessary that one be actually sick, as that term is usually applied, in order that the health authorities have the right to restrain his liberties by quarantine regulations. Quarantine is not a cure—it is

[46] See Chapter XII, page 175, on Liability.

[47] Report of American Public Health Association Committee (1923).

[48] Barmore v. Robertson (1922), 302 Ill. 422, 134 N. E. 815, 22 A. L. R. 835; U. S. Public Health Reports, May 26, 1922.

See also Ex parte Culver (Calif. 1921), 202 Pac. 661 (diphtheria contact).

a preventive. As the term is used in this opinion, quarantine is the method used to confine the disease within the person in whom it is detected, or to prevent a healthy person from contractng the infection. Disease germs do not usually travel through the air unaided, but they are carried by insects, by dumb animals, and by human beings. Effective quarantine must, therefore, be not so much the isolation of the person who is sick or affected with the disease as a prevention of the communication of the disease germs from the sick to the well. . . . . Quarantine, in the very nature of the regulation, is not a definite or uniform measure, but it must vary according to the subject. One of the important elements in the administration of health and quarantine regulations, is a full measure of common sense. It is not necessary for the health authorities to wait until the person affected with a contagious disease has actually caused others to become sick by contact with him before he is placed under quarantine.

EPIDEMICS

During an epidemic, which is the occurrence of an unusual number of cases of a communicable disease, more stringent measures may be taken by health officials, and will be allowed, than in normal times. Compulsory vaccination, for instance, may be required during an emergency in some jurisdictions, but not in the absence of such an exigency.[49] The courts have held that the prevention and control of epidemics must be left to the discretion of health authorities.[50] In an emergency, public places, such as schools,[51] motion picture theatres,[52] and carnivals[53] may be closed. While summary action is proper in an emergency, even under these conditions, the action taken must be reasonable. If an epidemic gets beyond the control of local

[49] See Chapter VI, page 89, on Vaccination.

[50] Highland Park v. Schlute (1900), 123 Mich. 360, 82 N. W. 62.

Alston v. Charleston Board of Health (1913), 93 S. C. 553, 77 S. E. 727.

Kirk v. Aiken Board of Health (1909), 83 S. C. 372, 65 S. E. 387, 23 L. R. A. (N. S.) 1138.

[51] Globe School District v. Globe Board of Health (1919), 20 Ariz. 208, 179 Pac. 55.

[52] Alden v. State (1919), 20 Ariz. 235, 179 Pac. 646.

[53] Benson v. Walker (1922), 274 Fed. 622.

officials, it is usually proper for the State health department to assist or, if necessary, assume control.[54]

What is an epidemic? Is a question which may be of considerable legal importance. According to Webster's Dictionary, "epidemic" means "Common to, or affecting at the same time, a large number in a community; applied to a disease which, spreading widely, attacks many persons at the same time." The same number of cases may, however, constitute an epidemic in the case of one communicable disease, whereas it may be only the usual or endemic amount for another malady. What an epidemic is, therefore, is a matter to be determined by health officials themselves, who are experienced with the scientific phases of communicable disease control. Courts should in this instance be unusually liberal in accepting the dictum of the public health officials, unless, of course, there is palpable fraud or reasonable doubt as to the sincerity of the declaration of an epidemic.

SPECIAL DISEASES

A few decades ago, it seems as if the bulk of court decisions arose out of conditions in which smallpox was the principal factor, though, of course, many other diseases gave rise to litigation. Today, of course, there is a wider variety of causes for court actions. Many of these situations are treated elsewhere in this book. Material on typhoid will be found under "Liability,[55] and on venereal disease under "Social Hygiene."[56] Decisions on diphtheria have arisen from time to time, often due to malpractice by chiropractors or faith healers in treating this disease, which, of course, can be treated scientifically only by the prompt administration of antitoxin. Bubonic plague was the subject of a

[54] See Chapter IV, page 58, on State Health Departments.

[55] See Chapter XII, page 184. Also Tobey, J. A.: Typhoid, Water Supply, Carriers and the Courts, Engineering News Record, September 25, 1924.

[56] See Chapter IX, page 133.

decision in a federal court in which it was held that the regulation of a board of health requiring Chinese to be vaccinated for this disease, regardless of previous conditions, exposure, residence, etc., and not making similar requirements for other races was void as arbitrary and unreasonable.[57] This is a good example of "class" legislation. Rat proofing ordinances have been upheld in the interests of plague control.[58] Malaria was the subject of a recent case[59] in which it was held that creation of an artificial pond in which anopheles mosquitoes could breed was a public nuisance and not a private one for which an adjoining land owner could recover damages.

Tuberculosis laws of the States have been indexed in a reprint issued by the United States Public Health Service.[60] It has been held that a statute creating a bureau of tuberculosis in a State board of health is a valid exercise of the police power,[61] and the construction of tuberculosis hospitals has been permitted as not *per se* nuisances,[62] though injunctions have been allowed against private tuberculosis hospitals in residential districts in some jurisdictions,[63] but not in others.[64] Tuberculosis has been held compensable under certain conditions under workmen's compensation laws.[65]

The control of rabies by requiring the muzzling of dogs

[57] Wong Wai u. Williamson (1900), 103 Fed. 1.

[58] City of New Orleans v. Beck (1916), 139 La. 595, 71 So. 883.

[59] Belton v. Wateree Power Co. (S. C. 1923), 115 S. E. 587.

[60] Tobey, J. A.: An Index to State Tuberculosis Laws. Reprint No. 841 (1923), U. S. Public Health Service, Washington, D. C.

[61] Sacramento County v. Chambers, 33 Cal. A. 142, 164 Pac. 613.
City of Northfield v. Atlantic County (N. J. 1915), 95 Atl. 745.

[62] Cook v. Fall River (Mass. 1921), 131 N. E. 346.
Le Bourgeois v. New Orleans (1919), 145 La. 274, 82 So. 268.

[63] Brink v. Shephard (Mich. 1921), 184 N. W. 404.
Birchard v. Board of Health (1918), 204 Mich. 284, 169 N. W. 901.

[64] San Diego Tuberculosis Association v. East San Diego (Calif. 1921), 200 Pac. 393, 17 A. L. R. 513.

[65] See 20 American Law Reports 76.

has been upheld as a valid regulation,[66] though a local ordinance which provided for the destruction of impounded dogs without a judicial hearing and in some cases without notice to the owners has been held void as authorizing the taking of property without due process of law.[67]

BARBERS

Since diseases may be communicated by barbers and the utensils they use, the regulation of this trade is a proper use of the police power and has been so held by the courts.[68] Barbers may be required to be licensed and may also be compelled to have physical examinations before being issued licenses.[69]

[66] People ex rel Knoblauch v. Warden of City Prison (1915), 216 N. Y. 154, 110 N. E. 451.

[67] Rose v. City of Salem (Ore. 1915), 150 Pac. 276.

[68] Cooper v. Rollins (1922), 152 Ga. 588, 110 S. E. 726, 20 A. L. R. 1105.

State v. Zeno (1900), 79 Minn. 80, 48 L. R. A. 88, 79 Am. S. R. 422, 81 N. W. 748.

State v. Walker (1907), 48 Wash. 8, 92 Pac. 775, 15 Ann. Cas. 257.

[69] Hanzal v. San Antonio (Tex. 1920), 221 S. W. 237.

CHAPTER VIII

Nuisances and Sanitation[1]

THE PLACE OF NUISANCES IN PUBLIC HEALTH[2]

The sanitarian's modern conception of a "nuisance" is that it is usually a minor matter as far as public health is concerned. There are, of course, a number of nuisances which do have considerable significance in health work, such as the pollution of water or milk supplies, insects such as flies and mosquitoes, rats, privies, contaminated food, and insanitary dwellings; but most of the things which are placed in this category of nuisances, as the word is commonly used, including odors, noises, untidy back yards, dead cats and other animals, garbage, rubbish, dumps, defective plumbing, stables, pigs, henhouses, and numerous other unsightly and annoying conditions will usually cause no harm or negligible injury to human health. These things may be nuisances, but they are not public health ones.

In spite of the general insignificance of nuisances as compared to other public health functions, such as the control of the communicable diseases, the education of the public in the principles of personal hygiene, and prevention of infant mortality, nuisance control always has bulked unduly large in the amount of interest accorded it by the public[3] and by health officials, and probably will continue to do so for some time to come, though, fortunately, with a waning importance. It is, therefore, necessary to devote a brief chapter to this subject, for there are many legal aspects of

[1] See Joyce on Nuisances (1906).

[2] See Chapin, C. V.: Nuisance Prevention a Hindrance to Disease Prevention, American Journal of Public Health, January, 1924.

[3] See Tandy, E. C.: The Regulation of Nuisances in the American Colonies, American Journal of Public Health, October, 1923.

it worthy of mention. It is interesting to note that in the first law book ever printed in this country on public health,[4] issued in 1892, five chapters requiring nearly one hundred pages, are given over to this topic, though in a later book,[5] published in 1914, only twenty-one pages are devoted specifically to this subject. If it were not for the fact that practical problems regarding nuisances, whether justified or not, are constantly arising in public health work, we should be tempted to omit the subject altogether.

The Report of the Committee on Municipal Health Department Practice of the American Public Health Association[6] states that sanitary inspection, or sanitation, forms a large part of the service of the health departments of the eighty-three cities surveyed by the Committee. In discussing this matter the report says,

> A study of the sanitary codes of the different cities surveyed shows that while the cities make provision for the examination into nuisances, "sources of filth and causes of sickness" within the city . . . . and most of them have regulations to prohibit the maintenance by person, private or municipal corporation of anything which is a hazard or danger to human health, not all of these regulations sufficiently define a nuisance or indicate what acts or conditions are included and subject to penalty. Furthermore, while many of the codes were apparently excellent at the time they were prepared, they could now be materially strengthened in the light of modern experience.

DEFINITION OF A NUISANCE

A nuisance, according to Blackstone, is "that which worketh hurt, injury or damage," and Sir Frederick Pollock defined it,[7] as "the wrong done to a man by unlawfully disturbing him in the enjoyment of his property or, in some cases, in the exercise of a common right." A public health

[4] Parker and Worthington on Public Health and Safety (1892).

[5] Hemingway on Public Health (1914).

[6] Public Health Bulletin No. 136 (1923), U. S. Public Health Service, Washington, D. C.

[7] Quoted in Webster's Dictionary.

nuisance is one which is actually hazardous or detrimental to the physical welfare of a considerable number of the people. Obviously, many conditions may also be legitimately called nuisances, as fences, gambling, prize fights, music, and obscene situations; more than one hundred conditions have, in fact, been held to be nuisances by the courts,[8] though probably not more than one-third could possibly be construed as directly influencing human health.

PUBLIC AND PRIVATE NUISANCES

Nuisances are either public, that is, affecting a considerable portion of the population in the enjoyment of their legal rights and privileges; or private, that is, affecting only one individual or family. Sometimes a nuisance may be both public and private and it is then called "mixed." An example of a private nuisance is a spite fence erected by one individual to shut out light and air from another person. If an individual allows the contents of a privy to percolate into a water supply used by a community, a public nuisance has been created. If a factory emits dangerous chemical fumes which permeate a whole neighborhood, a public nuisance exists, and, likewise, each individual injured may have a right of action against the factory for a private nuisance.

Some conditions are from the very nature of things always nuisances. Thus, a carrier of typhoid fever, or of any other disease, is a nuisance. So are rats, flies and anopheles mosquitoes. Such matters are called nuisances *per se* or *in esse*. Other things may or may not be nuisances, depending upon circumstances. A pool of water is not generally a health nuisance unless anopheles or aedes calopus mosquitoes are breeding in it. A pile of manure is not a health nuisance unless it breeds flies. These are called nuisances *in posse*.

A nuisance may be such according to the common law,

[8] 29 Cyclopedia of Law and Procedure 1165.

or because it is stated to be so by a statute.[9] Smallpox was a nuisance at common law, but smoke was not. Houses of prostitution always have been and are nuisances. An excellent definition of a public nuisance is given in the Penal Code of California[10] as follows: "Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons . . . . is a public nuisance." But in Massachusetts we find[11] that "Land which is wet, rotten or spongy, or covered with stagnant water, so as to be offensive to residents in its vicinity or injurious to health, shall be deemed a nuisance, which the board of health of the town where it lies, upon petition and hearing, may abate in the manner provided in the seven following sections . . . ." And in Ohio, we find this archaic and now recognized as unscientific phraseology,[12] "Whoever . . . . maintains a building . . . . employment or business . . . . which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, ... shall be fined not more than five hundred dollars." Dr. Chapin says,[13] "Bad odors are practically harmless," a statement concurred in by all sanitarians, so that it seems as if five hundred dollars was a huge penalty for a smell. These examples are, of course, relics of thought of a previous generation, which have been permitted to remain on the statute books. Both Ohio and Massachusetts have many excellent and progressive health laws.

[9] See Statutory Declarations of Public Nuisance, Columbia Law Review, April, 1918.

[10] General Health Laws. State Board of Health, 1923, no. 370.

[11] Massachusetts Manual of Health Laws, 1922, Section 132.

[12] Ohio Public Health Manual, 1920, Section 12646.

[13] Nuisance Prevention a Hindrance to Disease Prevention, American Journal of Public Health, January, 1924.

THE DETERMINATION OF AND RESPONSIBILITY FOR NUISANCES[14]

Whether a nuisance exists or not is always a question of fact. A mere declaration by an administrative officer that a thing is a nuisance does not make it so and the assertion must be capable of being proved. As was said in a New York case,[15] "Whoever abates a nuisance, unless acting under court order, does so at his peril and must prove the nuisance."

The responsibility for the nuisance is based on the fault of the person who causes it. His motive is of no importance and his negligence no excuse. A person never acquires a prescriptive right to maintain a nuisance, as, for instance, he may obtain the right to cross another's property through long and unmolested use of it for such purpose. The occupant of the land is responsible for a nuisance on it, though the owner may be if he created or maintains it, but a grantee of land is not responsible for a latent condition, unless he has notice of its existence. A municipal corporation is never responsible to its citizens for a nuisance maintained by it in connection with its political or governmental affairs, but may be for those coming within its corporate powers.[16]

REMEDIES FOR NUISANCES[17]

Today there are three remedies for nuisances, as follows: (1) A suit at law for damages; (2) a suit in equity to enjoin or abate the nuisance; (3) summary abatement. A fourth, the remedy of indictment, was formerly employed, but now it is rarely if ever used.

[14] See Feezer, L. W.: Place of Nuisances in the Law, American Journal of Public Health, July, 1916.

[15] People ex rel Copcutt v. Board of Health (1893), 140 N. Y. 1, 35 N. E. 320, 23 L. R. A. 481, 37 Am. S. R. 522.

[16] See Chapter XII page 175.

[17] Wambaugh, E.: Nuisances Under the Law, American Journal of Public Health, February, 1914.

When a nuisance exists, the aggrieved party, whether an individual or a private or municipal corporation, may sue for damages, and if actual nuisance and injury therefrom can be proved may recover judgment. Furthermore, a nuisance continued is a fresh nuisance every day it is suffered to remain unabated, and new suits for damages may be brought from day to day.[18] In order to avoid a multiplicity of suits and because sometimes the legal remedy is inadequate, the second remedy, that of equitable injunction, may be used. This is preventive in its nature. It does not give damages, but stops the nuisance, which may be the best procedure where health is concerned. If the injunction is not obeyed, a fine or imprisonment may be imposed for contempt of court. An example of the use of the injunction is shown in the case of *Georgia v. Tennessee Cooper Co.*[19] The State of Georgia brought suit in the United States Supreme Court to enjoin the Copper Company from discharging noxious fumes and gases which destroyed forests and vegetation and threatened injury to the health of the inhabitants of a portion of Georgia. Although the value of the manufacturing plant was many times that of the property of individuals which was harmed, the court granted the injunction, as the nuisance was clearly made out.

Summary abatement is where a health official or even a private individual enters upon the property where the nuisance exists and summarily puts an end to it, or attempts to do so. Before such action is taken, it is a general rule that notice must be given to the party responsible for the nuisance so that he will have an opportunity to abate it, but if there is an emergency and health is in jeopardy, such notice must of necessity be dispensed with.[20] The abate-

[18] Cooley on Torts (1907), Section 312 and cases cited. See also editorial, Injunction to Prevent Continuation of Nuisance. New York Law Journal, July 6, 1925.

[19] (1906), 206 U. S. 230, 27 S. Ct. 618, 51 L. Ed. 618.

[20] Cooley on Torts (1907), Section 46.

ment must be reasonable and performed with as little injury as possible. The burden is upon the officer abating the nuisance to show and prove that it actually is one and that such summary action is required. An action of damages is not precluded by summary abatement. After abatement the maintainer of the alleged nuisance may sue the abater for damages, though he may or may not recover,[21] and where a health officer was acting in a reasonable, prudent manner there is no liability for injury. The United States Supreme Court has upheld the right of the States to employ summary abatement,[22] and this court has said "It (the police power) is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance."

PREVENTION OF NUISANCES

The prevention of nuisances is, obviously, of more importance than the abatement after a nuisance has been allowed to come into being. This may be accomplished by wise legislation or ordinances which make it an offense to cause or maintain conditions which may or will become nuisances. If there is such specific prohibition in a statute or regulation made by authority of a statute, the prosecution or threat of prosecution for violation of the law or regulation often results in the effective abatement of the nuisance by the persons concerned. It may be more efficient, for instance, for the State by means of adequate legislation, to prohibit the pollution of streams[23] than to pass legislation penalizing

[21] See Chapter XII, page 178.

[22] Lawton v. Steele (1894), 152 U. S. 135, 14 S. Ct. 499, 38 L. Ed. 385.

See also Sentell v. New Orleans R. Co. (1897), 166 U. S. 705, 17 S. Ct. 693, 41 L. Ed. 1169.

[23] People v. Hupp (1912), 53 Colo. 80, 123 Pac 651, 41 L. R. A. (N.S.) 792, Ann. Cas. 1914 A, 1177.

Blydenburgh v. Miles (1872), 39 Conn. 484.

State v. Wheeler (1882), 44 N. J. L. 88.

Comm. v. Emmers (1908), 221 Pa. St. 298, 70 Atl. 762.

those who do pollute them or stating that such pollution constitutes a nuisance. The latter provisions may be necessary corrolaries of the former, but the forbidding of the pollution in the first instance is the important element. This holds good for any and all kinds of public health nuisances, and is a proposition which has been upheld by the United States Supreme Court.[24]

STREAM POLLUTION[25]

The pollution of streams is one of the real public health nuisances, for there are numerous instances on record of harm done by such pollution.[26] Every riparian owner has the right to have a stream come to him in its natural state of purity,[27] although upper proprietors may make a reasonable use of the stream. The discharge of industrial waste or sewage into a stream is not a natural use of it and if injury results to lower riparian owners, there is liability for damages, nor will the fact that the industry is an important one be an excuse. There is said to have been a special rule in Pennsylvania due to the prevalence of mining, where on grounds of public policy more freedom is allowed but in a 1924 court decision the pollution of a public water supply in that State by mine wastes was definitely enjoined.[28] The fact that others pollute a stream will not excuse a person, but evidence may be introduced to show that all damage was not caused by one party.

Equitable action to enjoin the pollution of streams will

[24] N. W. Laundry v. Des Moines (1916), 239 U. S. 486, 36 S. Ct. 206, 60 L. Ed. 396 (smoke ordinance).

[25] See Stream Pollution: A digest of Judicial Decisions and a Compilation of Legislation Relating to the Subject. Public Health Bulletin No. 87 (1917), U. S. Public Health Service, Washington, D. C.

[26] See Sedgwick, W. T.: Principles of Sanitary Science and the Public Health (1918). Macmillan.

[27] Cooley on Torts (1907), Section 305.

[28] Cooley on Torts (1907), Section 306.
Penn. R. Co. v. Sagamore Coal Co. (1924), 126 Atl. 386.

lie, as well as the legal action of damages. Such action may be brought either by the State through the attorney general, if the condition is a public nuisance, or by an individual for a private nuisance. Municipalities which pollute streams are in no better position than individuals and may be sued or enjoined[29] as this is not a governmental but a corporate function. State legislation regarding stream pollution has been passed by many States and has been often upheld as a valid exercise of the police power.[30] Frequently the power to make rules and regulations on the subject is delegated to the State Health Department.[31] While such a department may prohibit pollution or order it discontinued it can not, according to recent decisions,[32] dictate as to a specific measure to be employed in rectifying the conditions, as by the use of a septic tank constructed following specifications of the department.

PRIVIES

Insanitary privies have often been fertile sources of disease, and, as a consequence, health departments are, or

[29] Winchell v. Waukesha (1901), 110 Wis. 101, 85 N. W. 668, 84 Am. S. R 902.

Chapman v. City of Rochester (1888), 110 N. Y. 273.

Attorney General v. City of Grand Rapids (1913), 177 Mich. 503, 141 N. W. 890.

Joplin Consolidated Mining Co. v. City of Joplin (1894), 124 Mo. 129, 27 S. W. 408.

[30] Sprague v. Dorr (1904), 185 Mass. 10, 69 N. E. 344.

State v. Wheeler (1882), 44 N. J. L. 88.

City of Durham v. Eno Cotton Mills (1906), 41 N. C. 615, 54 S. E. 453; 7 L. R. A. (N. S.) 321.

State Board of Health v. City of Greenville (1912), 86 Oh. St. 1, 98 N. E. 1019, Ann. Cas. 1913 D, 52.

Miles City v. Board of Health (1909), 39 Mont. 405, 102 Pac. 696, 25 L. R. A. (N.S.) 589.

Salt Lake City v. Young (1915) 45 Utah 349, 145 Pac. 1047.

Stein v. State (1861), 37 Ala. 123.

[31] See, as example, Article V, Public Health Manual of New York.

[32] Purnell v. Maysville Water Co. (1921), 193 Ky. 85, 234 S. W. 967.

Behnisch v. Cedarburg Dairy Co. (1923), 180 Wis. 34, 192 N.W. 447.

should be, vigorous in attempting to do away with this type of real public health nuisance. The courts have held that the regulation of privies by the health authorities is proper,[33] and, further, that it is a constitutional exercise of the police power of the State to require that privy vaults be removed and replaced by sanitary water closets.[34] Cesspools, properly maintained, or connections with a sewer may legally be required.[35] The suppression of privy vaults by a municipal corporation has likewise been held not to be a deprivation of property without due process of law.[36]

INSECTS

Certain insects are known to be carriers of the micro-organisms which cause disease and are, therefore, public health nuisances. Reasonable methods to cope with these pests and prevent the dissemination of the disease are proper on the part of health authorities. An ordinance requiring screening of food products in order to prevent contamination of them by flies has been upheld,[37] as has also the wrapping of loaves of bread,[38] for the same purpose. A notable decision handed down a few years ago in Maine held that a guest is justified in leaving a hotel if flies become so numerous as to be dangerous to health.[39] In the course of this interesting opinion, the court said,

> It is a matter of common knowledge that the common house fly has come to be regarded by the enlightened understanding, not only as one

[33] Malone v. City of Quincy, (Fla. 1923), 66 Fla. 52, 62 So. 922.
Cartwright v. Board of Health of Cohoes (N. Y. 1901), 59 N. E. 1120.

[34] St. Louis v. Nash (Mo. 1924), 260 S. W. 985.
Harrington v. City of Providence (R. I. 1897), 38 Atl. 1.

[35] Commonwealth v. Roberts (1892), 29 N. E. 522, 155 Mass. 281, 16 L. R. A. 400.

[36] Spriggs v. Garrett Park (1899), 89 Md. 406, 43 Atl. 813.

[37] State v. O'Connor (1911), 115 Minn. 339, 132 N. W. 303, Ann. Cas. 1912. D 955, 35 L. R. A. (N. S.) 1112.

[38] State v. Normand (1913), 76 N. H. 541, 85 Atl. 899, Ann. Cas. 1913, E 996.

[39] Williams v. Sweet (Me. 1920), 110 Atl. 316, 10 A. L. R. 121.

of the most annoying and repulsive of insects, but one of the most dangerous in its capacity to gather, carry, and disseminate the germs of disease. He is the meanest of all scavengers. He delights in reveling in all kinds of filth; the greater the putrescence the more to his taste. Of every vermin, he above all others is least able to prove an alibi when charged with having been in touch with every kind of corruption, and with having become contaminated with the germs thereof. After free indulgence in the cesspools of disease and filth, he then possesses the further obnoxious attribute of being most agile and persistent in ability to distribute the germs of almost every deadly form of contagion.

Mosquitoes, which may carry the protozoa of malaria, or the microörganisms of certain other diseases, have been held by the courts to be common pests dangerous to the public health.[40] The breeding places of the various species which carry the diseases may be ordered destroyed and other suitable measures may be taken to cope with this nuisance. Since some types of mosquitoes are harmless, as far as spreading communicable disease is concerned, authority to deal with them is, naturally, less extensive.

Other insects, such as lice, fleas, ticks, bedbugs, and others which do or may be the cause of the spread of communicable disease may be dealt with in a scientific and reasonable manner by health authorities in their endeavors to protect the public health.

PLUMBING

Plumbing, as a part of sanitation, is of importance to health only in the fact that modern sanitary plumbing is a vast improvement over the old fashioned insanitary privy and cesspool. Contrary to a former superstition, defective plumbing will not and can not cause any of the communicable diseases. Safe and efficient methods of sewage and waste disposal are, however, essential to public health, and domestic plumbing is an integral part of sewerage systems, and also, for that matter, of water supply systems.

[40]Towaliga Falls Power Co. v. Sims (Ga. 1909), 65 S. E. 844.
Cohen & Co. v. Rittman (Tex. 1911), 139 S. W. 59.

Sewer air probably has little, if any effect on health or even on personal hygiene, though this is a matter for some further investigation. Many old court decisions have, nevertheless, assumed the former and now discredited idea that diseases might be influenced by bad plumbing and malodorous gases therefrom. The weight of legal authority is, unfortunately, to this effect, only two courts so far having been sufficiently progressive to deny it.[41]

Plumbing is the subject of laws and regulations in many States and is likewise usually regulated by municipalities. In many instances inspection of plumbing is placed under the jurisdiction of health departments. The proper place for such inspection is in the building department and not the health department. Regulation of plumbing to be valid under the police power must, however, be justified as a measure for the health and safety, and possibly also the comfort and general welfare of the people.

An excellent standard plumbing code for States, with a discussion of all aspects of the problem, though perhaps with an undue emphasis on the health importance, has recently been issued by the United States Department of Commerce. The code was drafted by a committee of distinguished engineers.[42]

[41] State v. Smith (1906), 42 Wash. 237, 84 Pac. 851, 114 Am. S. R. 114, 5 L. R. A. (N. S.) 674, 7 Ann. Cas. 577.

Replogle v. Little Rock (1924), 166 Ark. 617, 267 S. W. 353, 36 A. L. R. 1333.

See 36 American Law Reports, 1342 (1925) for a comprehensive article on this topic. Also 37 Corpus Juris, 221.

[42] Recommended Minimum Requirements for Plumbing in Dwellings and Similar Buildings. (1924) Bureau of Standards, U. S. Department of Commerce, Washington, D. C.

CHAPTER IX

Social Hygiene and the Law

WHAT IT IS

Social hygiene, as the term is used in the United States, is the practical promotion of a better understanding and wiser use of human sex endowments. This involves sex education, control and reduction of the venereal diseases,[1] repression of prostitution, protective social measures, and provision for wholesome recreation. In organizing social hygiene activities, therefore, public health, medical and nursing measures must be utilized, as well as educational, social, recreational, and legal ones. In this chapter a brief outline of the legal aspects only will be presented, but this statement of the extent of the movement in its other phases may serve to show the necessary interrelationships of the different parts of the problem.

Although voluntary societies had been working against the venereal diseases for a number of years prior to the World War, it was that event which evidentally served to awake among the people a national consciousness of the gravity of the problem. Congress in July of 1918 authorized a Division of Venereal Diseases in the United States Public Health Service, and an Interdepartmental Social Hygiene Board was created by the same act to undertake scientific, research, for the purpose of "discovering and developing more effective educational measures in the prevention of venereal diseases, and for the purpose of sociological and psychological research related thereto."[2]

[1] See Snow, W. F.: The Venereal Diseases, Their Medical, Nursing, and Community Aspects. The National Health Series of the National Health Council, New York (1924).

[2] 40 Stat. 886. The "Chamberlain-Kahn" Act.

Since the War the Public Health Service has maintained activities in its division, but the Interdepartmental Social Hygiene Board ceased to function in 1923, due to lack of appropriations from Congress. In addition to these federal agencies, many States have bureaus of venereal disease control, or carry on activities along these lines under the auspices of the State health departments. The Federal government, under this so-called Chamberlain-Kahn Act, has in the past (to 1923) made appropriations to the States for the work, provided these grants were matched by the States themselves.

Besides the official agencies in the field of social hygiene, the American Social Hygiene Association, with headquarters in New York, is the principal national voluntary agency concerned with this important subject. In addition to departments of public information; educational measures; medical measures; recreational measures; and protective measures it also has a department of legal measures. An illustration of the duties and functions of this last named department of the Association is given in its announced program for 1925, as follows:

1. Field investigation and legislative and legal advice for law enforcement committees and officials dealing with social hygiene questions.
2. Continued studies of laws and law enforcement work in the United States with special reference to prevention of commercialized prostitution.
3. Development and promotion of legislative social hygiene program for 1925.
4. Continuation of special comparative study of vice conditions in New York and in other selected cities.
5. International coöperation with official and voluntary agencies in the prevention of traffic in women and children, and in studying the legal aspects of other international social hygiene activities.

LEGAL ASPECTS OF SOCIAL HYGIENE IN GENERAL

A consideration of the legal side of social hygiene includes: (1) those questions of public health administration which

deal with the control of the venereal diseases; and (2) community measures, utilizing the law, the police, and the courts to bring about the repression of prostitution and to eliminate environmental conditions that create prostitutes, and also those which stimulate the demand for them. Social hygiene is a community responsibility which devolves upon many officials and extra-governmental agencies in order that definite results and actual success may be obtained.[3]

PUBLIC HEALTH MEASURES

One of the first essentials in social hygiene as far as public health administration is concerned, is to have practical, efficient legislation on the subject. Such legislation has lagged behind that relating to other branches of public health, but of late has been advanced somewhat. California is said to have adopted the first law for the control of the venereal diseases when it made these maladies reportable in 1911. In 1925 practically all States required venereal diseases to be reported and also had requirements providing for compulsory examinaton and detention of persons reasonably suspected of being carriers of these diseases. These requirements were either contained in statutes or in rules and regulations of State health departments promulgated in accordance with enabling acts. Thirty-four States had in 1925 laws or regulations forbidding the sale of patent medicines purporting to cure syphilis and gonorrhea, or prohibiting such sale except on a physician's prescription.[4]

COMPULSORY EXAMINATIONS

The right of health authorities to examine persons suspected of being venereally infected has been before the

[3] The Venereal Disease Handbook for Community Leaders, V. D. Bulletin No. 76 (1924), U. S. Public Health Service, Washington, D. C.

Galloway, T. W.: Sex and Social Health (1924), American Social Hygiene Association, New York.

[4] Social Hygiene Legislation Manual (1921 with 1925 supplement). American Social Hygiene Association, New York.

courts in a number of instances, and where such laws or ordinances have empowered the examination on reasonable suspicion, they have been upheld by the courts as a valid exercise of the police power of the State.[5] It is incumbent upon a health officer, however, to be able to prove that there were adequate grounds for reasonably suspecting the existence of the disease[6] or otherwise he may be held personally liable for damages.[7] If a woman were arrested for conducting a disorderly house, or if it could be shown that she was an inmate of a house of ill-fame, this would be proper grounds for believing her venereally infected, and would justify compulsory examination,[8] though mere arrest would not. An Iowa case denies the right of examination in the absence of statutory authority for it.[9] Mere gossip is not sufficient grounds as a reason for suspecting venereal disease and the person suspected is not required to report to the health authorities for examination, according to a recent case.[10]

ROUTINE EXAMINATION OF PRISONERS

In more than half of the States there exists legislation which empowers wardens or superintendents of prisons to have examined for venereal disease all persons turned over to them for custody. Similar examinations of sex offenders awaiting trial or sentence are sometimes provided for. In Massachusetts, the State Department of Health has arranged with the courts, of which there are 84 in the State, to have such examinations given in all cases of persons

[5] Dowling v. Hardin (Ala. 1921), 88 So. 217.
Ex parte Travers (Cal. 1920), 32 Cal. A. 1035.
Ex parte Johnson (1919), 40 Cal. A. 242, 180 Pac. 644.
Re Milstead (1919), 44 Cal. A. 239, 186 Pac. 170.
[6] Ex parte Shepard (Cal. 1921), 195 Pac. 1077.
[7] Rock v. Carney (1921), 216 Mich. 280, 185 N. W. 798, 22 A. L. R. 1178.
[8] Ex parte Arata (1921), 52 Cal. A. 380, 198 Pac. 814.
Ex parte Clemente (1921), 61 Cal. A. 666, 215 Pac. 698.
[9] Wragg v. Griffin (Ia. 1919), 170 N. W. 400, 2 A. L. R. 1327.
[10] City of Jackson v. Mitchell (Miss. 1924), 100 So. 513.

arrested for offenses against chastity. Some of the courts have attending physicians, while others seek the services of doctors connected with local venereal disease clinics.[11] There is here something of a confusion of medical and legal measures, in the absence of statutory authority allowing the examinations. The object is to ascertain the existence of cases of the diseases, a matter in which the health authorities are interested, for matters of record and medical control.

QUARANTINE

After a person has been discovered to have a venereal disease, proper quarantine may be imposed, as in the case of any other communicable disease dangerous to the public health,[12] a principle which in its application to the venereal diseases has been upheld by numerous courts.[13] In one case it was said,[14] in denying a writ of habeas corpus for the release of a venereally infected individual, "In the application for the writ it is stated that, if the petitioners be diseased, they are able to provide themselves with proper treatment in an isolated place in the City of Topeka. The answer is, 'The public health authorities are not obliged to take chances.'" The findings of the health officer of the existence of the venereal disease are, in the absence of bad

[11] Kelley, E. R. and Pfeiffer, A: Some Special Features of Massachusetts' Program for Venereal Disease Control, Journal of the American Medical Association, Sept. 20, 1924.

[12] See Chapter VII, page 104.

[13] Ex parte Johnson (1919), 40 Cal. A. 242, 180 Pac. 644.

Nyberg v. Board of Commissioners of Sedgwick County (1923), 113 Kan. 758, 216 Pac. 282.

Duncan v. City of Lexington (1922), 195 Ky. 822, 244 S. W. 60.

Ex parte Caselli (Mont. 1922), 214 Pac. 364.

Ex parte Irvin (1923), 106 Oh. St. 59, 139 N. E. 204.

Ex parte Roman (Okla. 1921), 199 Pac. 580.

Ex parte Brooks (1919) 85, Tex. Cr. A. 397, 212 S. W. 956.

State ex rel McBride v. Superior Court for King County (1918), 103 Wash. 409, 174 Pac. 973.

[14] Ex parte McGee (1919), 105 Kan. 574, 185 Pac. 14, 8 A. L. R. 831.

faith, conclusive, according to a Kansas decision,[15] but other cases have held that the court may inquire into the facts which are alleged to justify the detention.[16] A local ordinance providing that an infected person, not a prostitute, "may be released on bond," has been held not to compel such release, but merely to allow it if in the opinion of the city physician, the public welfare would not suffer.[17]

HABEAS CORPUS

The writ of habeas corpus which, as explained elsewhere,[18] may be employed by a person whenever his or her liberty has been restrained, as by arrest or quarantine, has often been invoked in order to secure the release of persons who actually are or who are alleged to be venereally infected. This right to have the validity of the detention reviewed by the courts has been upheld in a number of instances.[19] If the court finds that the quarantine was justified the writ will be denied and the person recommitted to custody.[20] A higher court has, in fact, restrained a lower one from issuing such a writ when the public health was shown to warrant the isolation of the patient.[21]

OPHTHALMIA NEONATORUM

The control of ophthalmia neonatorum, or "babies" sore eyes" belongs to a considerable extent in the domain of social hygiene, as this infection of the eyes at birth is most

[15] Ex parte McGee.

[16] Ex parte Hardcastle (1919), 84 Tex. Cr. A. 463, 208 S. W. 531.

[17] Ex parte Irby (Kan. 1923), 215 Pac. 449.

[18] See Chapter VII, page 114.

[19] Ex parte Travers (Cal. 1920), 32 Cal. A. 1035.
Ex parte Hardcastle (1919), 84 Tex. Cr. A. 463, 208 S. W. 531.

[20] Dowling v. Hardin (Ala. 1921), 58 So. 217.
Ex parte Irvin (1923), 106 Oh. St. 59, 139 N. E. 204.
Ex parte Roman (Okla. 1921), 199 Pac. 580.
Brown v. Manning (1919), 103 Nebr. 540, 172 N. W. 522.
Ex parte Caselli (Mont. 1922), 204 Pac. 364.

[21] State ex rel McBride v. Superior Court for King County (1918), 103 Wash. 409, 174 Pac. 973.

often caused by the germ of gonorrhea. The reporting of ophthalmia neonatorum was in 1924 compulsory in 47 States and the use of a prophylactic by physicians or midwives was compulsory in 29, by physicians only, in two other States and by midwives only, in one other.[22] Free prophylactic outfits were distributed in 32 states. In addition to State laws, there are numerous county and municipal ordinances which apply. Besides reporting and the use of the prophylactic, prompt treatment of any cases that occur is essential and this is provided for by legislation in 37 States, and local health officers are authorized to secure medical attention for un-cared for cases.

MARRIAGE LAWS[23]

The protection of the marriage relation, with respect to the prevention of the transmission of the venereal diseases, is a matter which has been recognized by legislation in a number of States. In 1925 seven States required a medical certificate from the male applicant indicating him to be free from venereal infection before the license would be issued. The Wisconsin law to this effect was in 1914 upheld by the Supreme Court of that State in a notable decision, in the course of which the court remarked, "The power of the State to control and regulate by reasonable laws the marriage relation and to prevent the contracting of marriage by persons afflicted with loathesome or hereditary diseases, which are liable to be transmitted to the spouse or inherited by the offspring, or both, must on principle be regarded as

[22] Summary of State Laws and Rulings Relating to the Prevention of Blindness and Babies' Sore Eyes. (Publication No. 9, 1924), National Committee for the Prevention of Blindness, New York.

Kerr, J. W. and Clark, T.: Ophthalmia Neonatorum, Public Health Bulletin No. 49 (Revised 1923), U. S. Public Health Service, Washington, D. C.

[23] Hall, F. S. and Brooke, E. W.: American Marriage Laws in Their Social Aspects. (1919) Russell Sage Foundation, New York.

undeniable."[24] Subsequently this law was amended in one or two particulars. No State has as yet seen fit to require a medical certificate from the female party to a marriage, but there is no reason in law or logic why such a procedure should not be adopted.

Where medical certificates are not insisted upon, some States require one or both applicants to swear under oath that they are free from venereal disease. It is a misdemeanor for venereally infected persons to marry in some States; they are forbidden to do so in other States; and the concealment of the maladies in such cases has usually been held by the courts to be such a fraud as to justify the annulment of the marriage.[25] The laws vary greatly throughout the States, moreover, and it has been suggested that a uniform marriage and divorce law would help to solve the problem. This would require another amendment to the Constitution, however, and Congress, though urged, has not yet seen fit to indorse this matter.

REPRESSION OF PROSTITUTION

Other social measures needed to cope with the venereal diseases include adequate legislation to deal effectively with prostitution; thorough coöperation between police departments, district attorneys, and courts; adequate detention facilities for offenders; machinery for adequate probation and the rehabilitation of offenders; and the development of a community consciousness so that citizens will insist upon efficient and vigorous methods to curb this evil. There must be not only the law, but persistent law enforcement.

Prostitution, as defined in a book issued by the American

[24] Peterson v. Widule (1914), 157 Wis. 644, 147 N. W. 966, 52 L. R. A. (N. S.) 778, Ann. Cas. 1916 B 1040. For a discussion of the operation of this law, see Hall, F. S.: Medical Certification for Marriage (1924), Russell Sage Foundation, New York.

[25] See 5 American Law Reports 1016 and cases cited.

Social Hygiene Association,[26] is the giving or receiving of the body for sexual intercourse for hire, and the giving or receiving of the body for indiscriminate sexual intercourse without hire. This includes both the woman and the man customer. This definition had in 1925 been adopted by statute in more than a dozen States. In the remainder the courts evidently follow the dictionary meaning, "common lewdness of a woman for hire," as the term prostitution has no common law definition.

The modern American plan for dealing with prostitution is to put it out of business and not, as has been done in Europe, to attempt to regulate it and register prostitutes. Segregation, the old red-light district, is also now condemned. The laws necessary for the repression of prostitution, according to the American Social Hygiene Association,[27] are as follows:

1. The Vice Repressive Law, which makes it an offense.

a. To keep, set up, maintain, or operate any place, structure, or conveyance for purpose of prostitution, assignation, or lewdness;

b. To occupy any such place for such purpose, or to permit such a place to be so used;

c. To receive, or offer, or agree to receive any person into such place for such a purpose, or to permit them to remain therein for such a purpose;

d. To direct, take, or transport, or agree, or offer to do so, any person to any such place with knowledge or reason to know that the purpose of such directing, etc., is prostitution, lewdness, or assignation;

e. To procure or solicit, or offer to do so for such purpose;

f. To reside in, enter, or remain in any such place for such purpose;

g. To engage in prostitution, lewdness, or assignation, or to aid or abet therein.

(*Note:* This law is specially designed to meet the new conditions and forms which prostitution has now assumed. It strikes at the go-between,

[26] Johnson, B.: Law Enforcement in Social Hygiene. (1924). American Social Hygiene Association, New York. Reprinted from Sex and Social Health.

[27] Social Hygiene Legislative Manual (1921, with 1925 supplement). American Social Hygiene Association, New York.

penalizes the driver of the for-hire automobile for permitting his conveyance to be used in the furtherance of prostitution, and punishes the immediate parties to the act, as well as the exploiters. It is particularly meritorious in that it removes all suspicion of sex distinction.)

2. A law, known as the "Injunction and Abatement Law," requiring city or county attorneys, and permitting individual citizens, to close by injunction, houses used in whole or in part for purposes of lewdness, assignation, or prostitution. This law permits the private citizen, by a suit in equity in the name of the state, to close by injunction a house of prostitution when weak-kneed public officials fail to enforce the law.

3. The so-called "White Slave Law" or "Compulsory Prostitution Law." This is a law directed against the panderer, the procurer, the madam who detains a girl in a house of prostitution, and one who transports another within the state for immoral purposes. It also reaches the pimp or other person who receives any of the proceeds of prostitution or who lives on the earnings of a prostitute.

4. A law or ordinance requiring all transient hotels and rooming-houses to be licensed annually; providing for their supervision and the revocation of license upon violation of laws against prostitution; requiring that a proper register of guests be kept, etc. This has proved to be one of the most effective and easily enforced measures against prostitution wherever tried.

5. A law or ordinance licensing taxicabs, dance-halls, skating-rinks, and other forms of commercial amusements, and providing for supervision and revocation of licenses where such taxicabs or places are used for purposes of lewdness, assignation, or prostitution.

6. A law making statutory rape apply to both sexes, so that prostitutes and other lewd women will be restrained from catering to young boys.

7. A law providing for the expeditious removal from office of any municipal or county official who neglects or refuses to enforce these laws. This is commonly known as the Ouster Law.

Standard forms for all of these suggested laws are available from the American Social Hygiene Association of New York.

MORALS COURTS

The Bureau of Social Hygiene of New York and the American Social Hygiene Association have made studies of the courts of Chicago, New York, Philadelphia, and Boston which deal with sex delinquency.[28] As a result of these

[28] Reprints, American Social Hygiene Association, New York.

surveys, standards for a socialized court for dealing with sex delinquents have been prepared.[29] The main features of these recommendations have been summarized as follows:

I. The court
  A. Court having jurisdiction.
    Either a specially designated branch of a centralized court, such as a municipal court, or a court specially created to handle sex delinquents. Laws re disposition of defendants and jurisdiction should be adequate.
  B. Nature of proceedings.
    A summary quasi-criminal action without a jury if possible. General public should be excluded.
  C. The judge and other personnel.
    Judge should be carefully selected and should have a knowledge of social problems with a social point of view and an understanding of psychology, in addition to the usual legal qualifications. Court should have its own personnel, such as bailiffs, court attendants and probation officers.

II. Process and police coöperation.
  Cases should not go before Grand Jury but should be brought either upon information or complaint. Close coöperation between court and police important.

III. Detention.
  Temporary house of detention a requisite for women defendants awaiting trial. There should be facilities for segregating different classes of offenders. Preferable to house very young girls in separate building. Arrested women should be taken to detention house rather than to police station. Facilities should there be available for fixing adequate bail.

IV. Trial.
  Small court-room. District Attorney should assist. Liberal procedure and human emphasis. Few adjournments.

V. Study of convicted defendants.
  A. Remand period.
    Remand after conviction for at least forty-eight hours for study and investigation.

[29] Worthington, G. E., and Topping, R.: Specialized Courts Dealing with Sex Delinquency (1925). Bureau of Social Hygiene, New York.

B. Investigation.
Finger print record. General physical and mental examination. Social and personal study and investigation.
C. Coöperation with Health Department.
Coöperation between the Court and Health Department recommended.

VI. Disposition of cases.
A. Suspended sentence
B. Probation
C. Reformative sentence
D. Punitive sentence (fallacy of fines in prostitution cases).
E. Indeterminate Sentence

VII. Probation and supervision

VIII. Records and statistics
Uniformity

Since no court having all of these ideal features exists, it would be necessary to secure State legislation authorizing or creating such a court.

CHAPTER X

Legal Aspects of the Mental Hygiene Movement

Many legal problems are involved in the mental hygiene movement, just as they are in all other branches of the science of public health. Although many books and articles on special phases of the legal side of mental hygiene have been published, there did not in 1925 seem to be any one succinct statement of the whole field. Many books have been written about insanity and the criminal law, a subject also touched upon in most of the works on medical jurisprudence, and there have been a few pamphlets on certain of the legislative aspects. Excellent as is some of this material, much of it suffers the drawback of prejudice, by virtue of having been produced either by physicians with no obvious knowledge of law, or by lawyers ignorant of psychiatry. The mental hygiene movement, again like the whole science of public health, is not merely a medical problem, but must draw upon law, sociology, psychology, education, and other sciences as well for its efficient and progressive development.

The legal aspects of the mental hygiene movement include broadly such matters as provision for the adequate, scientific, and humane care and training under governmental supervision of the mentally diseased and the mentally defective; methods of dealing with the criminal insane and the juvenile delinquent; development of proper State and local machinery requisite for these purposes; and standardization of practical legislation to achieve these ends throughout the country. There are, of course, many subdivisions of this general classification and it is our purpose here briefly and concisely to consider each in its various ramifications.

WHAT IS MENTAL HYGIENE?

First, what is mental hygiene? The mental hygiene movement is concerned with the improvement and alleviation of mental disorders, the reduction and prevention of mental disease, the promotion of mental health, and the control and betterment of the environmental factors which affect mental conditions. In other words the mental hygiene movement relates both to individuals and to society as a whole. Persons, communities, and the State come within its purview. When we consider that today patients in hospitals for mental diseases almost equal those in all other hospitals combined and that at least one-third of all crime and delinquency is asserted by some authorities to be due to mental deficiency, the enormity of the problem is apparent. During the war over 72,000 men were rejected from the draft for mental and nervous diseases, and 10 per cent of the soldiers evacuated during battle were suffering from hysteria and other functional disorders. In 1925 one in three of the ex-service men in hospitals was a neuropsychiatric patient. According to the United States Department of Commerce nearly a million persons were on January 1, 1923, confined in Federal, State, county, and private institutions for defectives, dependents, criminals, and juvenile delinquents, and in similar institutions. Mental defectives of all classes[1] included in this number totalled 348,186. An excellent popular description of mental hygiene is given in one of the books in the National Health Series.[2]

TYPES OF MENTAL DISORDERS

Mental disorders are many and various. Scientists class them as either defects or diseases. Feeblemindedness, for

[1] In the absence of definite standards of terminology, the term "mental defective" is used throughout this chapter to embrace all types of the mentally unsound, including the insane, feebleminded, and epileptic.

[2] Your Mind and You. By George K. Pratt, M.D. The National Health Series of the National Health Council, New York (1924).

instance, is a mental defect, due generally to congenital causes. Thus, the brain of an individual may fail to develop properly during the period of gestation or later, so that in after life, say at the age thirty, the individual may have the mentality of a child of ten. Feeblemindedness is divided into three grades; the idiot, who is utterly helpless and incapable of aiding himself in any way; the imbecile, whose maximum mental development is eight years; and, finally, the moron, possessing a mental status equivalent to that of a normal child of twelve years. The first two grades are usually recognizable without much trouble, but the number of morons who are at large is indubitably enormous.

Mental diseases include the definite major psychoses and the psychopathies and neuropathies, both of the latter being constitutional or acquired psychic disorders. Thus, the paresis which is the aftermath of untreated syphilis, is a good example of an acquired psychosis. Epileptic insanity is an instance of a constitutional disorder. There are many different types and degrees of psychosis, so that to attempt to describe all of them would be a task not for a law book, but for a treatise on psychiatry. The major psychoses include such forms as dementia praecox, paresis, juvenile paresis, melancholia, manic-depressive insanity, epileptic insanity, and paranoia. The minor ones include various manifestations from amnesia to violent St. Vitus' dance.

SCOPE OF THE LEGAL SIDE

The care of the so-called insane has been the subject of laws from early periods. By the Roman law an insane person could acquire no right and incur no responsibility. The Code of Justinian, completed in the middle of the sixth century, mentions insanity and, among other things, states that the judges are expected to give due consideration to the expert opinions of physicians regarding the insane, though they were not bound by them in deciding responsibility. Medieval laws, however, gave little protection to

the feebleminded. In England the term "non compos mentis" was used in a statute as early as 1325, though "lunatic" does not seem to have crept into the laws until 1541. In the United States, there has been much legislation on this general subject from the days of the colonies up to the present time, though it varies in every State and there is little uniformity in existing laws on the subject.

In the old days the theory underlying the restraint of "lunatics" was the protection of the public as a whole, rather than any amelioration of the condition of the patient. Today that concept has changed to a considerable degree and hospitals have taken the place of asylums. Society restricts the liberty of the mental defective for its own benefit, but also for the welfare of the patient. Prior to the eighteenth century an insane person who committed a felony was about as likely to be hung as was any other person, but today the criminal law recognizes the lack of responsibility of the mental defective and provides a more humane method of dealing with him. Not so many years ago, the disorderly insane were incarcerated in jails and the dependent feebleminded were consigned to the almshouse. While such conditions have in general been remedied, the existing laws are, on the whole, far from perfect and some of them are still archaic, to say the least.

Legal factors relating to the care of the non-criminal insane involve such matters as: Definitions of mental disorders; provision for effective State machinery for coping with them; the methods of ascertaining the condition of prospective patients; the procedure for having such patients admitted or committed to suitable institutions, either voluntarily or under compulsion; their care and rights during hospitalization, including parole, transfer, and release; cost of maintenance; and general administration.

INSANITY DEFINED

Definitions of insanity are today quite often given in State legislation on the subject; though there is little uni-

formity regarding it. As an example, the Illinois definition may be quoted:

> By insane is meant any person who by reason of unsoundness of mind is incapable of managing his own estate, or is dangerous to himself or others, if permitted to go at large, or is in such condition of mind or body as to be a fit subject for care and treatment in a hospital or asylum for the insane. No person, idiot from birth, or whose mental development was arrested by disease or physical injury occurring prior to the age of puberty, and no person who is afflicted with simple epilepsy is regarded as insane, unless the manifestations of abnormal excitability, violence or homicidal or suicidal impulses are such as to render his confinement in a hospital or asylum for the insane a proper precaution.

The courts have also presented numerous definitions of insanity. It is, of course, the function of the legislature to promulgate the laws, of the executive branch of government to put them into operation, and of the judiciary to interpret them and see that justice is done in accordance with the apparent intention of the legislature.[3]

In legal contemplation insanity consists of such mental unsoundness as to cause deviation from the normal method of behavior, so as to render the individual incapable of managing his own affairs or of being criminally responsible for his acts. All persons are presumed at law to be sane until proven otherwise. There are, of course, many degrees and sorts of mental unfitness, and much difference of opinion as to what extent of mental unsoundness constitutes lack of responsibility. Although it seems always to be asserted that the medical and legal viewpoints are at wide variance on this matter, there is a distinct tendency on the part of the courts to enlarge the scope of the definition of insanity. It must be remembered that the courts do not rely merely on precedents but also upon the developments of science and their manifestation in public opinion. Due weight is given by jurists to the findings and proved experiments of the sciences related to mental hygiene, such as medicine and psychiatry.

[3] See Chapter II, pages 15ff.

ADMINISTRATION OF MENTAL HYGIENE

The most effective administration of mental hygiene matters has been under State rather than local auspices. There should be a definite State bureau or department charged with entire supervision over this whole field, as in Massachusetts, where there is a State department of mental diseases appointed by the governor. All institutions and hospitals for the feebleminded should be under the general jurisdiction of such a department. It seems to be the consensus of opinion of experts that State hospitals should be provided, with such local ones also as conditions warrant, and that there should be separate institutions for mental disorders, although there may be departments in general hospitals. This, in general, is the system in Massachusetts where it is required by law. No local institutions are maintained in New York, though several cities have psychopathic wards in local hospitals. There are county hospitals for the insane in Wisconsin, New Jersey, Pennsylvania, and in many other States.[4]

COMMITMENT

Persons can be committed to hospitals or institutions for the care and training of the mentally deficient only in accordance with prescribed legal procedure. The Federal Constitution guarantees to all persons the right of personal liberty and states that no person shall be deprived of life, liberty or property without due process of law, a provision which is eminently just, proper, reasonable, and necessary.[5] The general procedure for commitment in all States consists today of three steps: (1) an application for commitment, (2) certification by medical authorities that the individual is legally insane, (3) order by a court of record for commit-

[4] See Summaries of State Laws Relating to the Insane (1917) and Summaries of State Laws Relating to the Feebleminded (1917). National Committee for Mental Hygiene, New York.

[5] See Chapter III, page 36.

ment. Provision for voluntary admission is now likewise made in a majority of the States. As a rule, the patient must be a resident of the State, though provision is sometimes made for indigent non-residents.

Petitions for commitment of those alleged to be "insane" or "feebleminded" are usually made by specified persons, as parents, relatives, guardians, and public officials, though in some States anyone can make application. Notice must usually be given to the alleged insane person, or to his representative. The medical examiners, usually two or more, are generally required to be licensed practitioners skilled in dealing with mental diseases. After their certificate has been received, the judge may hold a hearing and, in some cases, may even summon a jury to hear the evidence. In one State (Wyoming) trial by jury is mandatory. Every person has a right to his day in court before his liberty is restrained. A determination of his mental conditions by a lay jury, however, does not seem to be the best method, a fact which has been amply demonstrated by actual experience. After commitment the patient is removed to the hospital, usually accompanied by an official. Sometimes provision is made for appeal from the decision and the patient always has the constitutional right of habeas corpus,[6] by which he must be produced in a court of law for a hearing as to the legality of his detention. He is not deprived of due process of law by a statute authorizing immediate commitment, which has the provision for habeas corpus.[7] Commitment without a hearing is, in general, such deprivation.[8]

Emergency commitments pending a hearing are provided for in some States. Even when not specifically authorized, the State or any subdivision thereof, as a municipality, would

[6] See Chapter VII, page 114.

[7] Hammer v. Hill (1915), 228 Fed. 999.

[8] State v. Billings (1894), 55 Minn. 467, 57 N. W. 206, 43 Am. S. R. 525. In re Allen (1909), 82 Vt. 365, 73 Atl. 1078, 26 L. R. A. (N. S.) 232.

under its police power, the inherent power of sovereignty to protect the safety, health and welfare of its citizens, be able to seize and restrain the liberty of any person who was dangerous to the community, whether insane or not, for that matter. Temporary care and observation are sometimes authorized, in addition to emergency detention. The Massachusetts observation law is frequently cited as an excellent example in this connection.

TRANSFER

Transfer of patients from one institution to another within the same State is generally allowed. Parole is also in operation in most of the States and the authority to release patients who are harmless, for varying periods, is usually vested in the hospital superintendent. Conditions of parole are frequently set forth in the statutes. Discharge of patients who have been cured or who can be adequately and safely cared for elsewhere is usually provided, generally in accordance with court action. Cost of maintenance, if the patient is indigent, devolves upon the State or county but if he can pay, he is usually expected to do so.

GUARDIANSHIP

Not every person who is mentally defective needs to be placed in an institution, but he may need to be protected and supervised. In order to bring this about, there is needed a system of guardianship. In some States the law allows certain insane persons to be turned over to guardians who control not only the body of the individual but also his property. Such laws, however, are rather rare and need, perhaps, to be further developed. At law a person *non compos mentis* may make a valid contract under certain conditions and he is liable civilly for wrongs committed against other individuals, even though he may be incapable of malicious intent, except, of course, where such intent is

an essential part of the wrong.[9] The provision for proper guardianship, however, would place a harmless feeble-minded or insane person under supervision and care.

NEED FOR STANDARDS

On account of the great diversity of existing State legislation dealing with the non-criminal mentally disordered person, standard or model laws would be useful in serving as guides to legislators and others interested in this problem. The preparation and development of such standards in probably the logical task for the National Committee for Mental Hygiene, which has headquarters in New York. This association has already, in fact, made a number of useful studies along these lines[10] and could through expert committees guide modern thought in a more scientific way. The association has been responsible for much of the up-to-date State legislation which has been recently adopted on the subject, but it could be of a much wider influence through the medium of a legal bureau, which also had a comprehension of the scientific and social aspects of the problem.

CRIME AND MENTAL DISORDERS

Since the prevention and punishment of crime is an important element in the preservation of society, more attention has been given to the possible effect of mental disorder on criminal intent and felonious action than has been devoted to the public control of the non-criminal mental defective. In spite of the plethora of articles and pronouncements on this subject, the present condition of

[9] Clark on Contracts (1914); Williston on Contracts (1922).

[10] May, J. V.: Laws Controlling Commitments to State Hospitals for Mental Defectives. Furbush, E. M.: Summary of Present Legislation on the Subject of Insanity in the Various States, With Program for Meeting the Present Situation (1918). Mental Hygiene, a quarterly scientific magazine often contains articles of value concerning legal phases of the mental hygiene movement.

the criminal law in this country as a whole is particularly chaotic with respect to its dealings with the mentally disordered offender. Legislation is confused and court decisions are inharmonious, the system in each State varying apparently according to the whim or misconception of legislators and jurists.

Insanity seems today to be a favorite defense in homicide cases. Experts are frequently employed by both sides, one group testifying that the defendant is insane and irresponsible, the other that he is sane and knew and realized what he was doing. Thus, these various "alienists" offset each other and the jury usually becomes hopelessly confused by a mass of technical terms, frequently being swayed toward the side which has the most skillful attorneys, with little regard to the justice of the cause. While statistics indicate that at least one half of all persons convicted of crime are mentally defective it seems to the layman as if perfectly respectable and competent psychiatrists could find mental defects in every criminal. There are, obviously, many borderline cases and medical men are sometimes inclined to be impatient with the law because persons whom they deem just across the line may be considered responsible for their crimes. It should be remembered, however, that the theory of punishment for criminal action is not based on vengeance, but is for the protection of society by acting as a deterrent to others who may contemplate or attempt similar criminal action. Although there always has been some conflict between the medical and legal professions on this whole matter, there is more coöperation today than ever before and this spirit is constantly increasing. A vast amount of research is still necessary in order to ascertain what factors influence the motivation of human conduct.[11]

[11] The best modern reference book on the subject of crime and mentality is, in the opinion of the author, the recently published work of S. Sheldon Glueck, Ph.D., LL.M. entitled: Mental Disorder and the Criminal Law (1925). A review of this book appears in the American Journal of Public Health for November, 1925. The viewpoint of the psychiatrist is well set

MENTAL EXAMINATION OF PRISONERS

The first step in establishing the mental condition of a person accused of crime is, obviously, to require such a person to be examined by competent scientists before trial. The Massachusetts law[12] to this effect is often cited as the most progressive legislation on the subject. It provides for the examination by the State department of mental diseases of all prisoners known to have been previously indicted more than once, or to have been previously convicted of a felony. If this impartial bureau reports that the accused is mentally disordered, the court may, in its discretion, and

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forth in Insanity and the Criminal Law, by Dr. William A. White (1923). The number of books on the whole subject is legion. An excellent bibliography is given in Dr. Glueck's book.

[12] "Whenever a person is indicted by a grand jury for a capital offense or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony, is indicted by a grand jury or bound over for trial in the superior court, the clerk of the court in which the indictment is returned, or the clerk of the district court or the trial justice, as the case may be, shall give notice to the department of mental diseases, and the department shall cause such person to be examined with a view to determine his mental condition and the existence of any mental disease or defect which would affect his criminal responsibility. The department shall file a report of its investigation with the clerk of the court in which the trial is to be held and the report shall be accessible to the court, the district attorney and to the attorney for the accused, and shall be admissable as evidence of the mental condition of the accused. In the event of failure by the clerk of a district court or the trial justice to give notice to the department as aforesaid, the same shall be given by the clerk of the superior court after entry of the case in said court. Upon giving the notice required by this section the clerk of a court or the trial justice shall so certify on the papers. The physician making such examination shall, upon certification by the department, receive the same fees and traveling expenses as provided in section seventy-three for the examination of persons committed to institutions and such fees and expenses shall be paid in the same manner as provided in section seventy-four for the payment of commitment expenses. Any clerk of court or trial justice who wilfully neglects to perform any duty imposed upon him by this section shall be punished by a fine of not more than fifty dollars." (Acts and Resolves, 1921, Chap. 415, as amended by Acts and Resolves, 1923, Chap. 331, and Acts and Resolves, 1925, Chap. 169.)

after a suitable hearing, commit the individual to an institution for mental disease. The only drawback to this law is that it applies only to persons previously convicted or indicted more than once and not to all offenders.

A Massachusetts law passed in 1924[13] provides for the psychiatric examination of all convicted prisoners serving sentences of more than thirty days, except those sentenced for non-payment of fines. A physical examination must also be given, with special attention to venereal diseases and tuberculosis. The psychiatric examination is given under the auspices of the State department of mental diseases.

In various other States provision is made for the preliminary examination of persons accused of crime if they appear insane, but often such legislation does not specify who shall determine whether the examination is needed or or not. In Pennsylvania an executive of the jail in which the accused is confined may initiate proceedings for a mental examination, while somewhat similar laws are in force in Connecticut and Rhode Island. In other states the examination is conducted only if the defendant pleads insanity. The method of ascertaining the mental status of the accused, once his mentality has been questioned, also varies greatly. Quite often this is left to the judge and he may even summon a lay jury to help him decide. On the whole, the laws are unscientific and defective.

Legislation providing for adequate and scientific compulsory mental examination of all persons accused of crime, such examinations to be made by an unprejudiced State commission on mental diseases, followed up by commitment to a hospital for mental disorders if mental defects are found, should therefore, be one of the goals of the mental hygiene movement.[14]

[13] Chap. 309, Acts of 1924 (Gen. Laws, Chap. 127, Secs. 16, 17, and 18, as amended).

[14] See: Expert Testimony in Insanity Cases. Report of the Committee

JUVENILE COURTS

In the juvenile court mental examinations should be given to all persons brought before it, though present legislation on this subject seems to have neglected that. In 1919 only seven States authorized such mental investigations in their juvenile courts.[15] The report of the committee on juvenile court standards of the United States Children's Bureau (May 18, 1923) recommends adequate facilities for the study of the child's physical and mental health and states that "psychiatric and psychological study of the child should be made at least in all cases in which the social investigation raises a question of special need for study and should be made before decision concerning treatment, but only by a clinic or examiner properly qualified for such work." The standard juvenile court act prepared by a committee of the National Probation Association contains a clause that the court may order a mental examination of persons before it, and if found mentally defective may commit such persons to an institution. The juvenile court offers an important field for the early detection and correction of mental deficiency and full use should be made of the opportunity. Mental examinations by experts should, therefore be given as a routine procedure and laws to this end should be sought.

THE TESTS OF IRRESPONSIBILITY

At common law an insane person could not be convicted of any crime. An essential element of every crime is the criminal intent and an individual incapable of entertaining such intent can not be guilty of a criminal offense. The question is as to what amount of mental defect obliterates

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on Legislation of the Law Association of Philadelphia (Dec. 1924). This report contains drafts of bills providing for ascertaining the mental condition of persons indicted for crime, in certain cases.

[15] See A Summary of Juvenile-Court Legislation in the United States. U. S. Children's Bureau (Bur. Publ. No. 70; 1920), Washington, D. C.

the possibility of having this criminal intent and shows lack of mental responsibility. In the early English law, the rule was laid down that a man to be exempt from punishment must not know what he was doing any more than an infant or wild beast. Later, in the McNaghton case (1843), the criterion was set forth as to whether the accused could distinguish between right and wrong. Both of these tests have been superseded today by more scientific principles.

Following the McNaghten case, the English House of Lords propounded to their law judges a set of questions regarding the status of the law of insanity as applied to crimes. The answers to these questions have in large measure served as the foundation of the modern law on this subject. The American decisions have to a considerable degree followed the Opinion of the Judges, though the interpretations put upon them by various jurists in different jurisdictions have given rise to a confusion in the law in the various States. Some States use what is known as the right-and-wrong rules, while a few employ the irresistible-impulse test. No general conclusion can be drawn from the diversity of the decisions, but it may be stated that the test as it should be, in consonance with scientific thought on the subject, is whether the accused not only knew that he was doing wrong at the time he committed the overt act, but whether he had the power of choice over his actions, and could or could not control his impulses to do wrong.[16]

In order to ascertain the mental status of a person on trial for a crime, the usual method at present is the unfortunate system of expert testimony. Hypothetical questions are employed, often in an entirely unjustifiable manner. A lay jury, utterly ignorant of the scientific aspects of the case, is usually called upon to determine the important fact

[16] The reader is referred to Mental Disorder and the Criminal Law, by Dr. S. S. Glueck in which an excellent judge's charge to juries is suggested, to cover these points. See also Parsons v. State (1886), 81 Ala. 577, probably the ablest American court decision on crime and insanity.

of the mentality of the defendant. Lawyers, judges, and juries are frequently misled by external symptoms instead of relying upon the testimony of persons competent to pass on questions of mental disorders, which are discovered not by external symptoms but by more searching analyses of the individual.

DISPOSITION OF INSANE CRIMINALS

A person who has been acquitted for a crime on the grounds of insanity is usually, though not always, incarcerated in an institution for the mentally disordered. If he recovers, or is alleged to recover, his sanity after a period in such an institution, he may attempt to secure his release. This is usually accomplished by suing out a writ of habeas corpus.[17] If he is adjudged to have recovered his sanity, he may be released. This fact is sometimes determined by a lay jury, obviously the worst possible way. If he has been committed before trial, he may be compelled to stand trial if he recovers his sanity. Habeas corpus, sacred as is that legal institution, does not seem to produce efficaceous results when applied to attempts at release of alleged insane prisoners, or, for that matter, of the non-criminal insane.

STERILIZATION OF CRIMINALS

Eugenical sterilization laws have been passed in a number of States, but in every case where they have been tested in the courts they have been declared unconstitutional. The reason may be because the laws have been defectively drafted, rather than on account of the sociological idea which has actuated their promulgation. The essentials of an effective State eugenical sterilization law have been given as follows,[18] though there is no record as yet of the

[17] See Chapter VII, page 114, and Chapter IX, page 138.

[18] See Eugenical Sterilization in the United States, by H. H. Laughlin. Psychopathic Laboratory of the Municipal Court of Chicago (1922).

testing in the courts of a law complying with these specifications.

1. The law must apply to all persons who, because of degenerate or defective hereditary qualities, are potential parents of socially inadequate offspring regardless of whether in the population at large or in custodial institutions.

2. The law must provide for a proper executive agency with a state "eugenecist," giving his entire time to the work, with the supervision of a Board or Council, and to be free from political or other influence, except a consideration of public welfare.

3. The law must make ample provision for "due process of law" whenever demanded by the individual concerned or by any one having a lawful interest.

4. The law must make provision for the study of mental, moral, physiological, social, and economic effects of different types of sterilization.

5. The law must make due provision for safe, skillful, and humane operation and treatment.

6. The motive of the law must be purely eugenic and in the interest of public welfare, with no punitive element in the law whatsoever.

7. Ample appropriation to make the work effective must be provided.

IMMIGRATION

The control of immigration is another matter in which the mental hygiene movement may logically take an interest. Immigration has since 1882 been regulated by the Federal Government under enactments by Congress. With relation to the mentally defective or diseased immigrant, the law provides for exclusion of insane persons who have been

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See also Sterilization of Criminals (1915). American Medical Association, Chicago.

An article on Compulsory Sterilization Laws, by G. E. Worthington in the Journal of Social Hygiene for May, 1925, outlines this whole problem in its scientific and legal aspects.

insane within five years; and those who have had two attacks of insanity at any time previously. Inspection of arriving immigrants is made by medical officers of the United States Public Health Service, whose examination must of necessity generally be somewhat cursory. Not a very large proportion of immigrants are expelled because mentally defective. Inasmuch as a large amount of feeble-mindedness occurs in persons of foreign birth and much of the crime in this country is attributed by some authorities to the foreign born, it would seem that a more adequate and effective control of immigration would help along these lines. A system of obtaining case histories of mental conditions before the immigrants are permitted to leave the other side would be of value in weeding out the potentially dangerous and unfit.[19] Studies concerning these matters are under way (1925) by the United States Public Health Service and other agencies.

In this brief review of the legal aspects of mental hygiene, it has been possible, obviously, only to skim through the subject. Volumes have been written on the various phases of the whole problem and countless books could be added to the galaxy of tomes on these topics. The legal aspects can be broadly divided into those affecting the non-criminal mental defective and those concerned with the criminal insane, using the latter word not in its technical but its rhetorical sense. For both, there is needed an adequate State machinery capable of administering the situation created by the existence of these mentally deficient individuals. In this connection the present Massachusetts system of a State department of mental diseases seems the best. Naturally, such a bureau should be given sufficient and practical working authority.

The next essential is a workable scheme of voluntary or

[19] See Abbott, Edith: Immigration, (1924), University of Chicago Press. Also Treadway, W. L.: Our Immigration Policy and the Nation's Mental Health. The Scientific Monthly, October, 1925.

compulsory commitment of the mentally diseased into proper State institutions, with due regard for such matters of guardianship, parole, and release. In order to detect the criminal insane there is requisite a system of routine mental examinations of all persons brought before the courts, such examinations to be given before trial. In addition, such mental examinations should be given in connection with juvenile courts.

NEED FOR UNIFORM LAWS

The need for uniform laws on all these matters is apparent. While, probably, a standard law, or set of laws could not be framed, suitable for adoption verbation in each state, it is, nevertheless, entirely feasible to draft a model code, which could form the basis for any State legislation. Such a model law could be copiously supplied with footnotes explaining all possible legal contingencies. This task is probably one for the National Committee for Mental Hygiene, as the leader in the mental hygiene movement in this country. Possibly the work could be done by a joint committee, as with the coöperation of the American Bar Association, the Commissioners on Uniform State Laws, or the American Institute of Criminal Law. At any rate, it should be done and done soon and as a follow-up an endeavor should be made to secure adequate, practical scientific legislation in every State where it or any phase of it is now lacking. Not only is legislation needed but a better realization of the scientific aspects of the subject must be developed among members of the bar, just as a better understanding of the legal phases needs to be inculcated in physicians and psychiatrists. When these things have been done, real progress will have been achieved in the modern movement for mental hygiene.

CHAPTER XI

Health Officers and Employees

DEFINITION

A health officer is defined by Webster's Dictionary as "one charged with the enforcement of the sanitary laws." As a matter of fact, he is much more than that. The health officer is the guardian of the public health of the community, and as such has many other duties than merely enforcing or attempting to enforce sanitary laws. He is not only the agent of the health department, but its expert executive and adviser. The powers of health authorities must come from a definite source, or be capable of implication from existing legislation, but the health officer, in addition to being a law-enforcement executive, and the administrator of these powers, must also be a statesman, teacher, sociologist, and human engineer.[1] Public health work is today a specialty, not a branch of medicine or of any other science, and the sanitarian must be specially trained in this profession. A health officer is a sanitarian in an administrative capacity. He may be a State, county, or municipal official. Any public office is a public trust, conferred not for the benefit of the holder, but of society as a whole.[2]

APPOINTMENT

An appointment consists in the choice by the appointing authority of the person appointed. Methods of appointment of health officers are generally set forth in the statutes

[1] See MacNutt, J. S.: Manual for Health Officers (1915), Wiley.
Overton, F. and Denno, W. J.: The Health Officer (1920), Saunders.
Tobey, J. A.: Personality in Public Health, American Journal of Public Health, Nov., 1919.

[2] Throop on Public Officers (1892).

and must be followed.[3] Appointment should be made in writing, or there should be on file a resolution passed by the board at a regular meeting. It has been held that an appointment by drawing lots, when there was a tie vote, was invalid.[4] The power to select a local health officer is occasionally vested in a State health department.[5] The Model Health Code of the American Public Health Association suggests the following procedure, though some sanitarians question the wisdom of appointment and removal by the mayor:

Organization of Health Department

Regulation 1. There shall be a health department in the (City of ....., Town of ....) under the direction of a Health Officer. He shall be appointed by the Mayor, subject to the approval of the state health authorities. He shall be subject to removal by the Mayor, but may have a public hearing if he desires. He shall be suitably trained or experienced in public health administration. He shall devote his full time to the duties of his office. He shall execute and enforce all statutes, ordinances, and regulations for the protection and promotion of health and shall take such other action as is necessary for the public health. He shall have the power to appoint and remove, and fix the duties of such other employees as are necessary for the administration of the health department. He shall have the power to fix the salaries of the employees of the health department, subject to the approval of the legislative authorities of the (City of ....., Town of .....).

The tenure of office of a health officer depends upon the statutes, or if no provision is made regarding this point, on the will of the board or official making the appointment.[6] In a few States, municipal health officers are given a civil

[3] Braman v. New London (1902), 74 Conn. 695, 51 Atl. 1082.
Keefe v. Union (1903), 76 Conn. 160, 56 Atl. 571.
Young v. City of Ashland (Ky. 1910), 125 S. W. 737.
Valle v. Shaffer (1905), 1 Cal. A. 183, 81 Pac. 1028.

[4] Meany v. Staehle (1915), 160 Wis. 452, 152 N. W. 165.

[5] Davock v. Moore (1895), 105 Mich. 120, 63 N. W. 424, 28 L. R. A. 783.
McCullers v. Wake County (1912), 158 N. C. 75, 73 S. E. 816; Ann. Cas. 1913 D, 507.

[6] State v. Seavey (1894), 7 Wash. 562, 35 Pac. 389.

service status and after holding office a certain number of years, their tenure becomes more or less permanent.

DE FACTO OFFICERS

An officer who is not properly and legally appointed, but who holds office under the supposition that he is so appointed and whose occupation of the office is acquiesced in by the public, is called a *de facto* officer in distinction to a *de jure* officer who is properly appointed. The acts of a *de facto* officer are given the same faith and credit as a *de jure* officer, but the former runs the risk of being unable lawfully to recover compensation for his services and he is also civilly liable for damages due to negligence in the performance of his duties. There are several other drawbacks to this status, so that it is eminently desirable that appointments be proper and legal.

QUALIFICATIONS

The qualifications demanded of a health officer are often set forth in the statutes. Sometimes, this official is required to be a practitioner of medicine, and often he must be a resident of the community at the time he is appointed to serve it.[7] Both of these provisions are unnecessarily narrow, however. The health officer should be suitably trained in public health work and preferably possess a degree in public health from a reputable institution, whether he also has an "M.D." or not. An individual with a "Dr. P.H." granted by a first class school of public health is, for that matter, much more logically trained to administer a health department than is a physician with no public health training or experience. As to residence, it frequently happens that no person in a community is properly qualified to execute the duties of health officer and it is, therefore, desirable to go

[7] Nay v. Underhill (1899), 71 Vt. 66, 42 Atl. 610.

elsewhere for such an expert. There is no reason why women are not eligible as health officers.

The health officer is often required to be bonded, which is a legitimate requirement for any public official who has to handle or spend municipal funds.

COMPENSATION

The salary paid to an officer is not based on a contractual right, as is that of an employee, but on the official relation. The salary to be paid a health officer may or may not be fixed by statute or ordinance. As a general proposition, it is better that it should not be so fixed that it can not be changed to meet new economic conditions. Where it is so fixed, the health officer is entitled only to the amount stated.[8] In the absence of a statute the amount paid may be increased or decreased by the board of health, or other authority in charge of local health work while the incumbent is in office.[9] It is, of course, essential that health officers should be paid rates of compensation commensurate with the responsibility of the position and the training required for it. The Committee on Salary Standards of the American Public Health Association recommended in 1923 the following amounts as reasonable, though it should be borne in mind that changing economic conditions in the future may bring corresponding fluctuations in these rates:

a. Five thousand dollars should be the minimum salary received by a full-time qualified state health officer and from this figure it should increase up to not less than ten thousand dollars depending upon the population involved, industries, area, and length of service of the executive.

b. With regard to the salaries of chiefs of divisions in the state health

[8] Watts v. Princeton (1911), 49 Ind. A. 35, 96 N. E. 658.

[9] Fredericks v. West Hoboken Board of Health (1912), 82 N. J. L. 200, 82 Atl. 528 (a sanitary inspector).

Wallor v. Wood (1884), 101 Ind. 138.

Perkins v. Panola (Miss. 1902), 32 So. 316.

departments, the Committee believes that it is difficult to set definite standards. The salary depends upon numerous factors, such as the training, experience, length of service, personality, and general qualifications of the individual, and also upon the type of work, population of state, magnitude of problems, and salary of his superior. The Committee believes, however, that no salaries less than three thousand dollars should be paid in any state to chiefs of divisions, and that in most instances more than this should be paid; bearing in mind the factors outlined above.

c. No qualified county health officer should receive less than $3,000 a year.

d. Minimum salaries of qualified municipal health officers for full-time work should be as follows, according to population:

Population	*Salary*
1,500,000 and above	$10,000
1,000,000 to 1,500,000	7,500
750,000 to 1,000,000	7,000
500,000 to 750,000	6,000
100,000 to 500,000	5,000
50,000 to 100,000	4,000
25,000 to 50,000	3,500
10,000 to 25,000	3,000
Less than 10,000	2,500

The minimum salaries of qualified chiefs of divisions in municipal health departments should be approximately three-fifths of the above scale.

Litigation regarding compensation due or alleged to be due to health officers has often arisen and the courts have frequently been called upon to adjudicate many interesting points. It has been held that a county health officer, appointed according to law, is entitled only to the salary fixed in advance for his official services and can not recover in legal action for services rendered, no matter how great.[10] The salary of a health officer should, in fact, be fixed in advance.[11] If it is determined in advance, the health officer is entitled to it, whether his duties were prescribed in a

[10] Halford v. Senter (1915), 169 N. C. 546, 86 S. E. 525.
Yandell v. Madison County (1902), 81 Miss. 288, 32 So. 918.

[11] Adams County v. Aikman (1910), 57 Miss. 6, 52 So. 513.

formal manner according to law or not.[12] He is entitled to his salary as long as he is not removed, whether he discharges his duties properly or not.[13] Where a statute says that the salary fixed by the appointing body should be a "reasonable" amount, the health officer has a right to appeal to the courts if the compensation is unreasonably meagre, but it must clearly appear that the salary is inadequate.[14] As a general proposition, a health officer is not entitled to extra compensation for performing duties which come within the scope of his office,[15] but extra compensation has been allowed for duties in addition to those for which he has been appointed.[16] Where a physician is a part time health officer, it is, of course, proper for him to conduct his own private practice. The provision for part time health officers is not a wise one, however, and many instances are likely to arise which are on the border line between official duties and personal ones. The salaries of public officers are not subject to garnishment, a sound principle on the grounds of public policy, nor can the unearned salary be assigned, according to the better rule. When an office is abolished the salary is automatically discontinued, unless the officer has a special arrangement to receive compensation for a definite period of time. An office is not a contract.

If the salary of a health officer is refused and he believes that such action is wrongful, his remedy is to go to court and bring an action of mandamus against the board or other supervising authority.[17] Mandamus is the legal action to

[12] People v. Blood (1907), 105 N. Y. S. 20.
[13] People v. Sipple (1905), 96 N. Y. S. 897.
[14] Graves v. City of Paducah (1905), 28 Ky. L. 576, 89 S. W. 708.
Trabue v. Todd County (1907), 125 Ky. 809, 102 S. W. 309.
Butler County v. Gardner (1906), 29 Ky. L. 922, 96 S. W. 582.
[15] Tabor v. Board of Supervisors of Berrien County (1909), 120 N. W. 588.
Bourke v. Sanitary District of Chicago (1900), 92 Ill. A. 333.
Sloan v. Peoria (1902), 106 Ill. A. 151
Reynolds v. Mt. Vernon (1900), 164 N. Y. S. 592.
Brown v. Livingston County (Mich. 1901) 85 N. W. 745.
[16] Allen v. De Kalb County, (Tenn. 1900), 61 S. W. 291.
[17] Clay v. Civil Service Commission (1916), 89 N. J. L. 194, 98 Atl. 312.

compel a department or officer of the government (Federal State, or local) to perform a proper ministerial function which has been refused or neglected.[18] A municipal corporation may also be sued for salaries withheld, but the State may be sued only if it consents.

POWERS AND DUTIES

A health officer is an administrative officer.[19] "The Health officers of a city are officers of the State, their functions are governmental and are conferred in the interest of the public at large."[20] The functions of the health officer are to carry out the orders of the board of health, public health council, or other governing body; to enforce the health laws, ordinances, and regulations; and to perform all other duties necessary and proper for the prevention of disease and promotion of health. Sometimes his duties are more or less definitely set forth by law, while others may be implied from the laws. Such duties may be broad, in the interests of the public welfare, but must always be reasonable. "A health officer who is expected to accomplish results must possess large powers and be endowed with the right to take summary action, which at times must trench closely on despotic rule."[21]

Since the health officer is an administrative officer, he has no power to legislate,[22] though under certain conditions, as where there is a single commissioner of health, he may prescribe regulations for carrying into effect the laws as promulgated by the legislative bodies. As a rule, all health regulations are made by boards,[23] and then are to be applied by the health officer, as the executive of the board. In exercising discretion, as by determining to whom licenses

[18] See Chapter XIV on Law Enforcement, page 219.
[19] McAnaly v. Goodier (1905), 195 Mo. 551.
[20] White v. City of San Antonio (1901), 60 S. W. 427, 94 Tex. 313.
[21] State ex rel Nowotny v. Milwaukee (Wis. 1909), 121 N. W. 656.
[22] People v. Hamilton (1919), 177 N. Y. S. 222, 188 App. Div. 783.
[23] See supra, Chapter IV, page 50.

should be issued, a health officer is not usurping legislative powers, but is carrying on his administrative duties, and these and other executive or directory functions may be properly delegated to him.[24]

CONTRACTS

A board of health is generally given authority to make such contracts as are necessary to the proper administration to its affairs. As the agent of the board or department, these contracts and agreements are usually made by the health officer. All such contracts should, however, be authorized or approved by the board.[25] All contracts should be made in writing, even though the law recognizes some which are verbal. An administrative officer is wise to have records of his acts and this is especially the case with regard to the making of agreements and contracts. Ordinary correspondence is usually sufficient for minor matters, but any transaction in which considerable amounts of money are involved or in which important policies are implicated should have a formal document. Witnesses are not necessary unless required by statute, though sometimes the parties consider witnesses desirable. Health officers should not hesitate to invoke the aid of municipal attorneys or solicitors in drafting important legal papers. After all, that is a lawyer's job.

A board of health may not make a special contract with the health officer for services which he is expected to render anyway, in accordance with the terms of his employment or appointment.[26] As a general rule, the board of health

[24] See Moy v. City of Chicago (1923), 309 Ill. 242, 140 N. E. 845 (laundry regulations).

[25] Sawyer v. Wepello County (1911), 152 Ia. 749, 133 N. W. 104.
Chapman v. Muskegon County (1912), 169 Mich. 10, 134 N. W. 1025.
Schmidt v. Stearns County (1885), 34 Minn. 112, 24 N. W. 358.
Collier v. Scott (1905), 124 Wis. 400, 102 N. W. 909.

[26] Sloan v. Peoria (1902), 106 Ill. A. 151.
Cochran v. Vermillion County (1903), 113 Ill. A. 140.

may, however, properly contract with the health officer for extra duties or services not regularly within the scope of his employment.[27] The health officer may recover for such earned compensation.[28] The health officer, as an official, may not contract with himself as an individual for any purpose, nor should a board of health contract with one of its members.[29]

RELATION TO SUBORDINATES

A health officer frequently has subordinates in the health department. They are subject to his authority and receive their instructions from him. The health officer is not responsible for the misfeasance, or positive wrongs; or for the non-feasance, or negligences, or omissions of duty, of the sub-agents, or other persons properly employed, in the discharge of their official duties.[30] Any powers definitely and positively entrusted to the health officer himself can not be delegated to deputies, but he may have such deputies

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Yandell v. Madison County (1902), 81 Miss. 288, 32 So. 918.

Congdon v. Nashua (1904), 72 N. H. 468, 57 Atl. 686.

Reynolds v. Mt. Vernon, 26 App. Div. 581, 50 N. Y. S. 473; aff. (1900) 164 N. Y. 592, 58 N. E. 1091.

[27] Dewitt v. Mills County (1904), 126 Ia. 169, 101 N. W. 766.

Hudgins v. Carter County (1903), 115 Ky. 133, 72 S. W. 730, 24 Ky. L. 1980.

Cedar Creek Twp. v. Wexford County, (1903), 135 Mich. 124, 97 N. W. 409.

St. Johns v. Clinton County (1897), 111 Mich. 609, 70 N. W. 131.

Buffalo Lake Bd. of Health v. Renville County (1903), 89 Minn. 402, 95 N. W. 221.

Schmidt v. Stearns County (1885), 34 Minn. 112, 24 N. W. 358.

[28] Selma v. Mullen (1871), 46 Ala. 411.

Plumb v. York County (1914), 95 Nebr. 655, 146 N. W. 938; Ann. Cas. 1915 D, 1195.

[29] Spearman v. Texarkana (1894), 58 Ark. 348, 24 S. W. 883, 22 L. R. A. 855.

Ft. Wayne v. Rosenthal (1881), 75 Ind. 156, 39 Am. R. 127.

Bjelland v. Mankato (1910), 112 Minn. 24, 127 N. W. 397, 140 Am. S. R. 460.

Lesieur v. Rumford (1915), 113 Me. 317, 93 Atl. 838.

[30] Story on Agency (9th Ed. 1882).

and assistants as may be necessary to aid in the general fulfillment of his duties. Thus, a board of health was not allowed to delegate to a committee the power of the board to employ a physician.[31] Where deputies are properly appointed, they have the powers of their principal. A deputy is, moreover, not to be confused with an assistant, for the former is one who fills the shoes of his principal, while the latter is a mere helper.[32]

Subordinates must be appointed or employed in accordance with authority, express or implied, in the statutes, and in the manner set forth, if any. Where a mayor and health officer employed a physician to assist them in certain yellow fever work and there was no record of any authority for such employment, the physician was unfortunately unable to recover for his services.[33]

OFFICER AND EMPLOYEE[34]

A distinction is to be made between *officers* and *employees*. The essential element of a public office is that the duties perfomed involve the exercise of some portion of the sovereign power whether great or small.[35] An employee is merely one who is employed to give his services to the employer, in other words, is a private agent. For instance, a health officer, whose office is authorized by law, and who is the public agent charged with promotion and protection of municipal health is generally considered to be an officer. A physician employed by him to treat quarantined persons, or to perform some other routine duty would be an employee, as would also a public health nurse or sanitary inspector. Exactly who is an officer and who an employee in the health

[31] Young v. Blackhawk County (1885) 66 Ia. 460.
[32] Dillon on Municipal Corporations. (5th Ed. 1911).
See officers by F. J. Goodnow in 29 Cyc. 1357.
[33] Magee v. Town of Osyka (Miss. 1908), 45 So. 836.
[34] See Goodnow on Administrative Law (1905).
[35] Mechem on Public Officers (1890).
1 Dillon on Municipal Corporations 736. (5th Ed. 1911).

department depends, of course, on the precise wording of the statutes. The importance of the distinction is this: in the case of an officer, the salary attaches to the office as an incident to it and is not dependent on the performance of actual service, while the compensation of employees is for services definitely rendered. The office is not, generally speaking, a contractual relation, but the employment is. There is no property right in an office. The principles of public law apply to officers, those of private law to employees.

RESPONSIBILITY

A separate chapter is devoted to the entire matter of the liability of the municipality for the acts of its officers and employees and of the personal liability of health officers, to which the reader is referred.[36]

TERMINATION OF OFFICE

An office may be terminated by the death of the incumbent, expiration of term, or by his resignation, suspension, removal, impeachment (in a limited class of cases), or by abandonment. If the tenure of office is not definitely fixed, the health officer may be removed at any time by the board.[37] The removal of a health officer is not a breach of contract, as a rule.[38] The actual methods of removal are frequently set forth in the statutes and must be complied with.[39] An office may be forfeited by misconduct, failure to perform the duties, or refusal to act in the official capacity. Court action, by means of the writ of quo warranto, is sometimes necessary to vacate an office. The Legislature may abolish an office, provided there is no constitutional limitation.

[36] See Chapter XII, page 175.

[37] Patton v. Board of Health (1899), 127 Calif. 388, 59 Pac. 702, 78 Am. S. R. 66.

[38] Young v. City of Ashland (Ky. 1910), 125 S. W. 737.

[39] Attorney General v. Stratton (1902), 194 Mass. 51.

Young v. City of Ashland (38 above).

The power of summary removal is, moreover, incident to the power of appointment. A hearing should always be granted an officer whom it is proposed to remove. Complete physical disability may be proper grounds for removal.

An employee who is hired under civil service laws or rules can be discharged only in accordance with these same laws or rules.[40]

[40] State ex rel Roe v. Seattle (Wash. 1915), 153 Pac. 336.

CHAPTER XII

Liability

This chapter will consider the liability and legal responsibility for injuries or damage, actual or alleged, arising out of public health activities, with special reference to municipal corporations, health officers, physicians, other individuals, private corporations, and schools.

I. MUNICIPAL CORPORATIONS

As previously pointed out,[1] the functions of a municipal corporation may be either (1) governmental, or (2) corporate. In the former category are those activities which are essential to the welfare of the public and which are carried out by the municipality as the agent of the State. Those matters which are public duties are governmental functions and one of the most important of these is the care of the public health. A municipal corporation is never liable for damages arising out of the performance of its governmental functions, a proposition which is today a well established principle of law.[2] The city is not liable for the acts of its officers in enforcing health laws or in performing public health work, no matter how arbitrary or unreasonable such actions may be.[3] The officers themselves may be personally, liable[4] under certain conditions, but the municipality never in the absence of a specific stature imposing such liability. The courts have held, for instance, that a city in enforcing

[1] See Chapter V, page 69, on Local Health Departments.

[2] Dillon on Municipal Corporations. (5th Ed. 1911.)

[3] Robinson, D.: Liability of a City for Acts Committed by Its Officers in Enforcing Health Laws. Reprint No. 593 (1920) U. S. Public Health Service, Washington, D. C.

City of Shawnee v. Jeter (1924), 96 Okla. 216, 221 Pac. 758.

[4] *Infra*, page 178.

a valid ordinance requiring its citizens to be vaccinated is not liable because one of its officers administers impure vaccine and thereby causes injury, because the city itself is exercising a governmental power.[5] So, too, it has been held that enforcement of quarantine regulations and the maintenance of isolation are public functions and the city is not liable for damages caused by its officers negligently or wrongfully carrying out such regulations,[6] even by maliciously arresting a person, testing his blood and confining him in jail.[7] Nor is there liability for arresting a person who has been in contact with a case of communicable disease.[8] Similarly, there is no liability in the maintenance of municipal hospitals.[9]

The corporate or proprietary functions of a municipality consist of such duties as the care of the public highways, street lighting, maintenance of water works, sewage disposal and other public works and such other activities as are usually undertaken by business corporations. For injuries or wrongs committed by its agents in performing these duties, the municipality is liable. Thus, it has been held that a city is liable for the negligent installation and management of an incinerator.[10] In supplying water for public consumption, a municipality is not, in the absence of a statute to the contrary, an insurer of the purity of the water, but is bound to use reasonable care and diligence to

[5] Wyatt v. Rome (1898), 105 Ga. 312, 31 S. E. 188, 42 L. R. A. 180, 70 Am. S. R. 41.

[6] White v. San Antonio (1901), 94 Tex. 313, 60 S. W. 427.

Bates v. Houston (1896), 14 Tex. C. A. 287, 37 S. W. 383.

Butler v. Kansas City (1916), 97 Kans. 239, L. R. A. 1916 D, 626, Ann. Cas. 1918 D 801, 155 Pac. 12.

[7] Franklin v. Seattle (1920), 192 Pac. 1015, 112 Wash. 671, 12 A. L. R. 247.

[8] Levin v. Burlington (1901), 129 N. C. 184, 55 L. R. A. 396, 39 S. E. 822.

Pritchard v. Morganton (1900), 126 N. C. 908, 36 S. E. 353, 78 Am. S. R. 679.

[9] City of Lexington v. Batson's Admr. (1904), 118 Ky. 489, 81 S. W. 264, 26 Ky. L. 363.

Butler v. Kansas City see (6) above.

[10] Kneece v. City of Columbia (S. C. 1924), 123 S. E. 100.

provide pure and wholesome water, free from contamination.[11] If it does not do so, it will be liable for injuries caused by such failure.[12] It is also liable for negligence in the operation of the waterworks system.[13]

There is sometimes a conflict of opinion as to whether certain circumstances form governmental or corporate functions. Thus, in New York it has been held that a city is liable for negligent acts of its employees in the department of street cleaning,[14] but in Pennsylvania the court held that the removal of ashes and refuse by a municipal government is a governmental function, designed primarily to promote public convenience, comfort and health, and therefore no recovery could be had against the municipality for negligence in performing this duty.[15] In commenting on these two cases, the New York Law Journal gives the following excellent statement of the general status of the law.[16]

> It would seem, on principal, that a municipal corporation while engaged in the performance of a public service in which it has no particular interest, and from which it derives no special benefit or advantage in its corporate capacity, but which it is bound to see performed in pursuance of a duty imposed by law, for the general welfare of the inhabitants or of the community, is not liable for the torts therein of its officers and employees.[17]

In Georgia, it has been held that sprinkling the streets is a public health function.[18]

[11] Tobey, J. A.: Typhoid, Water Supply, Carriers, and the Courts. Engineering News-Record, Sept. 25, 1924.

[12] Keever v. Mankato (1911), 113 Minn. 55, 129 N. W. 158, 33 L. R. A. (N. S.) 339, Ann. Cas. 1912 A, 216.

Stubbs v. City of Rochester (1919), 226 N. Y. 516, 124 N. E. 137.

[13] Highway Trailer Co. v. Janesville Electric Co. (Wis. 1922), 190 N. W. 110.

[14] Missano v. The Mayor (1899), 160 N. Y. 123.

[15] Scibilia v. City of Philadelphia (1924), 124 Atl. 273.

[16] Editorial, June 23, 1924.

[17] Citing Condict v. Jersey City (1884), 46 N. J. L. 157 and Connelly v. Nashville, (1897), 100 Tenn. 262. See also Harris v. D. C., 256 U. S. 650, 41 S. Ct. 610, 65 L. Ed. 1146.

[18] McCrary v. City of Rome (Ga. 1923), 115 S. E. 283.

A municipality is liable for the creation of a nuisance,[19] such as the pollution of a stream by the discharge of sewage into it[20] and a permit issued to a city by the State health department to discharge such an effluent into a stream does not authorize the creation or maintenance of the pollution.[21] Although there is some conflict of opinion as to whether maintenance of sewerage systems is a governmental duty or a corporate one, the weight of authority is to the effect that it is the latter and the municipality is liable for wrongdoing in this connection.[22]

II. HEALTH OFFICERS[23]

Health officials are often concerned about the extent of their own personal liability for acts done in the course of their official duties. In many States legislation governing such liability is in existence and public officials should, of course, familiarize themselves with it. Officers of a municipal corporation are not liable, according to Dillon,[24] for errors or mistakes of judgment in the performance of acts within the scope of their authority as to which they are empowered to exercise judgment and discretion in the manner of their performance, in the absence of malice or corruption or a statutory provision imposing the liability.

A health official is an administrative or ministerial officer, the agent of the government he represents, and as such has

[19] See Chapter VIII, page 125.

[20] Stream Pollution; A Digest of Judicial Decisions and a Compilation of Legislation Relating to the Subject. Public Health Bulletin No. 87 (1917) U. S. Public Health Service, Washington, D. C. Page 72 and cases cited.

Also Princeton v. Pool (Ky. 1916), 188 S. W. 758. Mitchell Realty Co., v. City of West Allis (Wis. 1924) 199 N. W. 390.

[21] People v. City of Rudley (Cal. 1924), 226 Pac. 408.

[22] Hemenway on Public Health (1914) p. 522 and cases cited.

[23] Most of the material in this section appeared in an article by the author in the American City for October 1924, entitled "Personal Liability of Health Officials."

[24] 1 Dillon's Municipal Corporations, page 771.

many quasi-judicial functions. He can not be held individually liable for any act which is essential for the protection of the health of the public, but in performing his duties he must be reasonable and prudent. For a mere error of judgment he will not be held liable, but if he is unreasonable, arbitrary, oppressive, or malicious in doing his work and thus causes injuries to persons or property, he will be liable.[25]

As an example of a reasonable exercise of power by a health officer, there may be cited mistakes of quarantine. Where an individual was isolated under the belief that he had smallpox, though as a matter of fact he did not have it, members of the local board of health were held by the highest court of Iowa not to be liable for this error.[26] So, too, a health officer in New Jersey was held not personally liable for quarantining for scarlet-fever after four physicians had diagnosed it as such, though it turned out not to be this disease.[27]

An early (1874) Maine case held that an owner could not recover from a health officer who had compelled him to remove the wallpaper from a room where a smallpox patient had been confined, although considerable evidence was introduced to the effect that such removal was unnecessary.[28] It is possible that such a requirement today, in light of our modern knowledge, would be held unreasonable, but the general rule of law would be the same.

[25] Crayton v. Larabee (1917), 220 N. Y. 493, 116 N. E. 355, L. R. A. 1918 E, 432.

Bellows v. Raynor (1913), 207 N. Y. 389, 101 N. E. 181.

Raymond v. Fish (1883), 51 Conn. 80, 50 Am. R. 3.

See also note, 24 American Law Reports 794.

[26] Beeks v. Dickenson County (1906), 131 Ia. 444, 108 N. W. 311, 6 L. R. A. (N. S.) 831, 9 Ann. Cas. 812.

[27] Valentine v. Englewood (1908), 76 N. J. L. 509, 71 Atl. 344, 19 L. R. A. (N. S.) 262, 16 Ann. Cas. 731.

See Forbes v. Escambia County Board of Health (1891), 28 Fla. 26, 9 So. 862, 13 L. R. A. 549.

[28] Beavey v. Preble (1874), 64 Me. 120.

Other cases have held no liability for failure to remove a smallpox patient from a house,[29] for quarantine of a vessel on account of the prevalence of disease at the port,[30] for fumigating a millinery shop,[31] for failure to provide a nurse as required by law,[32] and for the exclusion of an unvaccinated child from school.[33] So, too, where a health officer merely carries out the orders of his board he is not liable,[34] even if the board is acting in excess of its authority. But where a health officer was negligent in quarantining patients in a tent, in cold, damp weather, so as to aggravate their disease and cause death, he was liable.[35] In a recent Kansas case, it was said by the court, "The law no less than humanity requires humane and decent treatment of those who must be segregated from their usual conveniences and friends, and whoever acts with utter disregard of this requirement renders himself liable."[36]

When a health officer does act in excess of his authority, he is generally liable as an individual. For instance, a recent (1921) Michigan case held that a health officer was liable in damages for causing a girl to be examined for venereal disease, because he did not have reasonable grounds for believing that she was infected. It turned out, as a matter of fact, that she did have gonorrhea, but the court maintained that there was no legal justification for the examination, as there was no testimony showing good faith on the part of the health officer.[37] A president of a board

[29] Whidden v. Cheever (1897), 69 N. H. 142, 44 Atl. 908, 76 Am. S. R. 154.

[30] Compagnie Francaise de Navigation a Vapeur v. State Board of Health (1902), 51 La. Ann. 645, 25 So. 591, 56 L. R. A. 795, 72 Am. S. R. 458 aff. 186 U. S. 380, 28 S. Ct. 811, 46 L. Ed. 1209.

[31] Allison v. Cash (1911), 143 Ky. 679, 137 S. W. 245.

[32] Rohn v. Osmun (1906), 143 Mich. 68, 106 N. W. 697, 5 L. R. A. (N. S.) 635.

[33] Zucht v. King (Tex.), 225 S. W. 267, affirmed (1922), 260 U. S. 174.

[34] Kirby v. Harker (1909), 143 Ia. 478, 121 N. W. 1071.

[35] Aaron v. Broiles (1885) 64 Tex. 316, 53 Am. Rep. 764.

[36] Moody v. Wickersham (1922), 111 Kan. 770, 207 Pac. 847, 24 A. L. R. 794.

[37] Rock v. Carney (1921) 216 Mich. 280, 185 N. W. 798, 22 A. L. R. 1178.

of health was held personally liable for arbitrarily ordering fumigation of a vessel, although it had a clean bill of health and had not come from an infected port.[38] Health officials have also been held liable for injuries during the unauthorized use of a dwelling as a hospital,[39] for unwarranted flooding of land,[40] and for neglect in preventing the sale of impure milk.[41]

When a health officer destroys property under the belief that it may be dangerous to health, but as a matter of fact, it is not and could by no means be reasonably so considered, he is liable.[42] As was remarked in a New York case, 'Whoever abates a nuisance, unless acting under court order, does so at his peril and must prove the nuisance.''[43] In 1890 in Massachusetts, the members of a board of health ordered certain horses to be killed on the supposition that they had glanders. It turned out that they did not have this disease and the members were held liable. It was their business to ascertain the exact facts and they were negligent in not doing so.[44] In a similar connection, live stock commissioners were liable for the destruction of healthy cattle by mistake.[45]

Health officers, like all other public officers, are not ordinarily individually responsible for the negligence of those

[38] Beers v. Board of Health (1883), 25 La. Ann. 1132, 48 Am. Rep. 256.

[39] Brown v. Murdock (1885), 140 Mass. 314, 3 N. E. 208.

Hersey v. Chapin (1894), 162 Mass. 176, 38 N. E. 442.

Barry v. Smith (1906), 191 Mass. 78, 77 N. E. 1099, 5 L. R. A. (N.S.) 1028.

But no liability where owner executes a lease:—Sallinger v. Smith (1906), 192 Mass. 317, 78 N. E. 479.

[40] Overmyer v. Barnett (1919), 70 Ind. A. 569, 123 N. E. 654.

[41] McKenzie v. Royal Dairy (1904), 35 Wash. 390, 77 Pac. 680.

[42] Lowe v. Conroy (1904), 120 Wis. 151, 97 N. W. 942, 66 L. R. A. 907, 102 Am. S. R. 983. 1 Ann. Cas. 341.

[43] People ex rel Copcutt v. Board of Health (1893), 140 N. Y. 1, 35 N. E. 320, 23 L. R. A. 481, 37 Am. S. R. 522.

[44] Miller v. Horton (1891), 152 Mass. 540, 26 N. E. 100, 10 L. R. A. 116, 23 Am. S. R. 850.

[45] Pearson v. Zehr (1891), 138 Ill. 48, 29 N. E. 854, 32 Am. S. R. 113.

whom they are obliged to employ. If, however, the fault of the subordinate is due to the connivance of the superior, the latter may be held liable, and where a ministerial officer owes a duty to an individual, he may be liable to that individual for negligence of his deputies. He is also liable for the acts of his private servants, personally and not officially employed. The health officer is never personally liable for official contracts, provided there is no fraud or actual deception.[46]

III. PHYSICIANS

A physician in attendance on a case of comunicable disease must take all necessary measures to prevent the spread of the disease. He must comply with the laws and the regulations of the health departments which apply to his conduct in such circumstances. If he does not do so, or is careless and negligent, and the disease is thereby communicated to others, he is civilly liable for injury caused.[47] It was held in one case, however, where typhoid fever was disseminated in a family that the attending physician, while bound not negligently to do any act tending to spread the disease, was not required to enforce the rules of the State board of health, that being a matter for the local health officer. He had reported the existence of the disease and there was no evidence to show that he had contributed to its spread, so he was not held liable.[48] A physician, who spreads disease by using unclean instruments or improper methods is personally liable.[49] A physician does not violate his professional relations to his patient by reporting cases of communicable disease.[50]

[46] 1 Dillon, Municipal Corporations, 776.
[47] Davis v. Rodman (Ark. 1921), 227 S. W. 612, 13 A. L. R. 1459.
Skillings v. Allen (1921), 148 Minn. 88, 180 N. W. 916.
[48] Davis v. Rodman, supra.
[49] Helland v. Bridenstine (1909), 55 Wash. 470, 104 Pac. 626.
[50] Simonson v. Swenson (Nebr. 1920), 177 N. W. 831.

IV. OTHER INDIVIDUALS (LAYMEN)

An individual who wilfully or negligently spreads a communicable disease is civilly liable for damages,[51] as well as being guilty of a misdemeanor according to the statutes or ordinances. It does not matter whether the person who thus communicates disease does so by having it himself, or, being healthy himself, by permitting some other individual to cause the infection. Thus, a landlord or innkeeper who lets a room he knows to have been recently occupied by a person with a communicable disease, or who puts a well person in a room with a sick one, is liable for any injuries caused thereby.[52] In other words, any person who negligently or deliberately exposes another to communicable disease is personally liable in a civil action as well as being criminally so. Knowledge of the existence of the disease is, of course, essential to prove liability.[53] A guest is not liable for contracting to stay in a hotel if it is closed on account of disease[54] and a guest is justified in leaving if flies become so numerous as to jeopardize health.[55]

[51] Cooley on Torts (1907).
Smith v. Baker (whooping cough), 20 Fed. 709 (1884).
Franklin v. Butcher (1910), 144 Mo. A. 660, 129 S. W. 431.
Edwards v. Lamb (1899), 69 N. H. 599, 45 Atl. 480, 50 L. R. A. 160.
Kliegel v. Aitken (1896), 94 Wis. 432, 69 N. W. 67, 35 L. R. A. 249, 59 Am. S. R. 901.
M. K. & T. R. v. Wood (1902), 95 Tex. 223, 66 S. W. 449, 56 L. R. A. 592, 93 Am. S. R. 834.
See Annotated Cases 1912 B, 63.
As to negligence, see the recent case of Williams v. Williams (N.C. 1925), 125 S. E. 482.
[52] Cesar v. Karutz (1875), 60 N. Y. 229, 19 Am. R. 164.
Minor v. Sharon (1873) 112 Mass. 477, 17 Am. R. 122.
Cutter v. Hamlin (1888), 147 Mass. 471.
Gilbert v. Hoffman (1885), 66 Ia. 205, 55 Am. R. 263.
[53] Long v. Chicago R. Co. (1892) 48 Kans. 28, 30 Am. S. R. 271.
[54] Kohn v. Geist (1918), 168 N. Y. S. 21.
[55] Williams v. Sweet (Me. 1920), 110 Atl. 316, 10 A. L. R. 121.

V. PRIVATE CORPORATIONS

A private corporation is an individual entity and is liable for its wrongs, civil and criminal, just as is an individual.[56] Private water companies, for instance, have the same degree of liability that municipalities[57] do and have been held civilly responsible for failure to take reasonable precautions to prevent the spread of typhoid fever through their supplies.[58] Such a company is not liable, however, where the plaintiff was guilty of contributory negligence in not himself taking the usual precautions when the existence of typhoid fever was widely and publicly known and had even occurred in his own family.[59] Nor is a company liable for negligence for failure to ascertain that typhoid existed on property not controlled by it, a mile and a half above the point where the supply was secured.[60] A water company which had contracted to supply pure water was restrained from collecting water rates during a period when the water was impure.[61]

Railroads, being common carriers, are required to take every reasonable precaution to insure the safety of their passengers, including their freedom from the possibility of catching disease. If a passenger is exposed to communicable disease due to the fault of the railroad company, the latter is liable. The United States Railroad Administration prepared some years ago a Standard Railway Sanitary Code, which has been adopted by the Conference of State and Provincial Health Authorities and issued by the United

[56] See Clark on Corporations (1916).

[57] See supra, page 175.

[58] Kohlmeyer v. Ohio Valley Water Co. (1914), 58 Pa. Sup. C. 63.

Hayes v. Torrington Water Co. (1914), 88 Conn. 609, 92 Atl. 406.

[59] Green v. Ashland Water Co. (1898), 101 Wis. 258, 77 N. W. 722, 43 L. R. A. 117, 70 Am. S. R. 911.

Hamilton v. Madison Water Co. (1917), 116 Me. 157, 100 Atl. 659, Ann. Cas. 1918 D, 853.

[60] Buckingham v. Plymouth Water Co. (1891), 142 Pa. 221, 21 Atl. 824.

[61] City of New Castle v. New Castle Water Co. (Pa. 1915), 95 Atl. 534.

States Public Health Service as a reprint.[62] In 1924 it had been adopted in all but fourteen States.

Industrial concerns must provide their employees with safe and healthful surroundings in which to work. If they do not do so and a workman's health is impaired, the employer is liable. The employer must also see to it that the fellow workmen of the employee are such as not to spread disease or cause injury. Workmen's compensation acts in practically all the States provide for compensation for accidents arising out of the course of employment. Whether occupational disease is an accident depends, of course, on the wording of the statute.[63] In general, it may be said that a disease incurred as a result of working conditions is an accident. Typhoid fever, due to drinking polluted water supplied by the employer has been held in several states to be an accident within the meaning of the law,[64] though an opposite view has been taken in Ohio.[65] Whether Workmen's compensation acts apply or not, the common law rule does and that is to the effect that the employer is liable if disease results from causes over which he has control. The United States Bureau of Labor Statistics, Washington, D. C., has a number of pamphlets listing and describing court decisions on workmen's compensation and outlining existing legislation on this subject.

[62] Reprint No. 604 (1920), U. S. Public Health Reports, Washington, D. C.

[63] For tuberculosis and workmen's compensation, see 20 American Law Reports, 76.

[64] Christ v. Pacific Mutual Life Insurance Co. (Ill. 1924), 144 N. E. 161.

Frankamp v. Fordney Hotel Co. (Mich. 1923), 193 N. W. 205.

Vennen v. Dells Lumber Co. (1915), 161 Wis. 370; 154 N. W. 640; L. R. A. 1916 A, 273.

Wasmuth-Endicott v. Karst (Ind. 1922), 133 N. E. 609.

Brodin's Case (Me. 1925), 126 Atl. 829.

In Victory Sparkler and Specialty Co. v. Francks (Md. 1925), 128 Atl. 635, phosphorus poisoning was held to be an accident under the Maryland law.

[65] Industrial Commission v. Cross (Ohio 1921), 136 N. E. 283.

VI. FOOD WARRANTIES

Any retail dealer or restaurant keeper who sells food for immediate use warrants that the food is fit for human consumption. Such warranty may be implied, but it exists, nevertheless, and the vendor is liable in damages for injuries or disease caused by impurities or other defects in the food. This is an old rule of law and one which has frequently been upheld by the courts. Negligence or knowledge of the condition of the food by the seller do not enter into the matter at all. Thus, a druggist who sold impure ice cream which made the consumer violently ill shortly after eating it in the drugstore, was held liable;[66] and a butcher who sold pork infected with trichinosis was also held liable.[67] A recent case[68] has upheld the granting of damages to an individual who became seriously ill from ptomaine poisoning after eating fish in a restaurant. In rendering the opinion, the court stated that this is a sale of goods and that, "under such circumstances the buyer does by implication make known to the vendor the particular purpose for which the article is required, and, where the buyer may assume that the vendor has had an opportunity to examine the article sold, it appears conclusively that he relies upon the latter's skill or judgment (*Rinaldi v. Mohican Co.*, 25 N. Y. 70). Consequently there is an implied warranty that the food is reasonably fit for consumption."[69] It has been held, however, that a customer must pay for milk he buys, even if it comes from an unregistered dairy.[70]

The manufacturer of food is also liable under an implied warranty for latent defects, even though the food is not

[66] Race v. Krum (1918), 222 N. Y. 410.

[67] Rinaldi v. Mohican Co. (1916), 225 N. Y. 70.
See also Catani v. Swift & Co. (Pa. 1915), 95 Atl. 931.

[68] Temple v. Keeler (1924), 238 N. Y. 344, 144 N. E. 635.
See N. Y. Law Journal, Oct. 6, 1924.
Friend v. Child's Dining Hall Co. (1918), 231 Mass. 65, 120 N. E. 407.

[69] See also 26 Corpus Juris 783 and cases cited.

[70] Luchini v. Roux (Calif. 1916), 157 Pac. 554.

purchased directly from him, but from an intermediate retailer.[71] Although this is the general rule of law there is some conflict of authority on the subject and in New York the reverse has been held,[72] but the middleman or wholesaler is liable.[73] The care of the public health demands that the wholesomeness of food should be properly safeguarded and on this ground alone, it is proper to consider that a manufacturer of foods warrants them as pure and safely edible.[74] The manufacturer is likewise liable to the retailer if a consumer is injured.[75]

VII. VOLUNTARY HEALTH ASSOCIATIONS

Just as municipal corporations acting in a governmental capacity are free from liability, so also are charitable corporations or associations exempt from liability when carrying on welfare or charitable enterprises, not for profit. Thus, a private hospital or clinic which treats indigent patients without making a charge would not be liable for injuries caused. A voluntary health association which conducts clinics or summer camps or other activities on a philanthropic basis and not for profit would, therefore, not be liable for any damages caused in connection therewith.[76] A voluntary health association is liable on its contracts, of course, and also for activities undertaken within the scope of its business dealings.

[71] Williston on Sales (1924 ed.).

See also Perkins; Unwholesome Food as a Source of Liability, 5 Ia. Law Bulletin, 6, 88–92.

[72] Chysky v. Drake Bros. Co. (1923), 235 N. Y. 468. Commented upon in Cornell Law Quarterly for June, 1924.

[73] Aron v. Sills (1924), —App. Div.—, N. Y. Law Journal, February 7, 1925.

[74] See Smith v. Carlos (Mo. 1923), 247 S. W. 468.

[75] Mazetti v. Armour (1913), 75 Wash 122, 135 Pac. 633, 48 L. R. A. (N. S.) 213, Ann. Cas. 1915 C. 140.

[76] Cooley on Torts (1907).

VIII. SCHOOLS

Schools have entrusted to them the care of pupils. If disease results from conditions directly under the supervision of the school authorities, as for instance, pollution of a well, or escape of coal gas, the school would ordinarily be liable. This does not mean that contraction of a communicable disease by one pupil by association in school with another creates a liability, where ordinary and reasonable precautions are taken to prevent such a happening.

CHAPTER XIII

Health Legislation and How to Draft It[1]

Adequate and practical legislation is one of the essential features of successful public health effort, a proposition which has been set forth earlier in this book.[2] In order that it may be adequate and practical, as well as scientific and reasonable, it is necessary that the legislation be properly prepared by an expert. The drafting of sound laws on any subject is an intricate, elaborate, intellectual, and forensic task which only a person thoroughly conversant with the technical features of bill writing is able to do satisfactorily. Those statutes which are regulative and impose restraints and prohibitions on persons and property are especially difficult to draw up so that they will stand the test of court analysis. Most public health legislation is included in this category and so it is apparent that the writing of health laws is no duty for the uninformed, nor for the dilettante. In this chapter an endeavor will be made to outline some of the practical considerations involved in the drafting of legislation pertaining to the public health.

THE FUNCTION OF THE LEGISLATURE

The Legislature is the sole law making branch of our tripartite system of government.[3] Its function is to ascertain what laws are needed, by means of thorough investigation and discussion, and then to promulgate them. When a law has been passed, it is the duty of the Executive branch of government to enforce it, and of the Judiciary to see that

[1] Much of the material in this chapter appeared in an article on this subject by the author in the Nation's Health for December, 1924.

[2] See Chapter I, page 1.

[3] See Chapter II, page 16.

justice is applied under it, which may involve the interpretation of the statute.

The Legislature may decide as a matter of fact that vaccination is a preventive of smallpox and conclude that the interests of the public health demand that children in the State shall be required to be vaccinated before being admitted to schools, and accordingly pass a law to this effect. If such legislation infringes no constitutional rights of citizens, it will be upheld by the courts, who will not question the fact, as that was for the legislature to determine.[4]

In some cases the broad principles of legislation may be laid down by the Legislature and then power conferred upon some agent of the State, as a State board, a county, or municipal corporation or board, to make rules and regulations for the administration of the act. Thus, the Legislature may decide that communicable diseases must be controlled in the interests of the public health and pass a law to this effect, but conferring upon the State Board of Health the power of issuing rules as to what diseases shall be deemed communicable and the manner in which they shall be controlled.[5] The courts can interfere with this right only when there has been a palpable abuse of the discretion conferred,[6] as when the rule is clearly unreasonable.[7]

Under the authority of the police power[8] the States have passed a considerable amount of legislation on public health subjects. In spite of the abundance of this legislation, sanitarians are aware that even more is needed, or that insuffi-

[4] Viemeister v. White (1904), 179 N. Y. 235, 72 N. E. 97, 103 Am. S. R. 859, 1 Ann. Cas. 334, 70 L. R. A. 796.

Jacobson v. Massachusetts (1904), 197 U. S. 11, 49 L. Ed. 643, 25 S. Ct. 358, 3 Ann. Cas. 765.

[5] See Chapter VII, page 104.

[6] Naccari v. Rappelet (1907), 119 La. 272, 44 So. 13, 13 L. R. A. (N. S.) 640.

State v. Withnell (1912), 91 Neb. 101, 135 N. W. 376, 40 L. R. A. (N. S.) 898.

[7] State v. Holcombe (1886), 68 Ia. 107, 26 N. W. 33, 56 Am. R. 853.

[8] See Chapter III, page 31.

cient or improper statutes should be replaced with those which are more scientific and efficient.[9] It has been said that laws are easier to secure in this country than in some others, Great Britain, for instance. This may be true, but it is not always simple to obtain legislation on public health, desirable as it may be. Perhaps some of the difficulty in the past has been attributable to ineffectiveness in drafting the proposed legislation.

Most of the State Legislatures meet biennially, though a dozen or so meet annually. One, that in Alabama, meets only once in four years. In many States the duration of the session is fixed by law, as for sixty or ninety days or some other period, but in eighteen States there is no limit. About forty legislatures assemble in the odd numbered years, as in 1925, 1927, etc., while about a dozen meet during the even numbered years, as 1926, 1928, etc. Special meetings may generally be called when necessity arises. When the forty or more legislatures have been in session, some seventy-five thousand bills on all subjects have been introduced in all these States, according to the experience of recent years. Of this number perhaps 1500, more or less, have been concerned with the public health. Not all of the vast number of bills submitted become laws, of course, but many new ones are added annually to the statute books.[10]

In commenting upon the expansion of statutes in this country, Attorney General Harlan F. Stone had this to say,[11] "We make a prodigious number of laws. In enacting them we disregard the principles of draftsmanship and leave in uncertainty their true meaning and effect. . . . . We disregard the principle that there is a point beyond which

[9] See Fishbein, M.: Fads in Health Legislation. American Mercury, September, 1924.

[10] See Tobey, J. A.: Coördinating the Public Health Laws of the United States. American Journal of Public Health, December, 1923.

[11] Quoted in the New York Times, January 11, 1925.

Mr. Stone is now an Associate Justice of the United States Supreme Court.

restraints of positive law cannot be carried without placing too great a strain on the machinery and the agencies of law enforcement."

ASCERTAINING THE NEED FOR HEALTH LAWS

When new or better health legislation is contemplated, obviously the first step to take is to ascertain what is the existing statute law on the subject. Too often enthusiastic persons decide that such and such a measure should be presented, whereas the subject is already adequately covered or may be completely taken care of by implied powers in general legislation. If the former is the case, the law may easily be found; while in the latter, recourse may perhaps be had to court decisions to clarify the point. A legislature may, of course, alter by legislation a principle laid down by a court, provided, of course, that no constitutional question is involved. Thus, for instance, a court may decide that existing health laws do not authorize exclusion by local health departments of unvaccinated children from schools in the absence of an emergency, whereupon the legislature may pass a law providing for just such exclusion.

The best place to find the written law is in the authorized codes, compiled statutes, or general statutes of the State. Since these are compiled as of a certain date, it is further necessary to consult the official printed volume of session laws which have been issued since the code or compiled statutes was published. All of these volumes are on file at the State Capitol and are usually in the larger public libraries throughout the State. They are often in the possession of health officials, who should be certain, however, that they possess a complete set, giving all laws and amendments to date. The attorney general of the State will usually give information to local officials regarding laws. Many State health departments have issued pamphlet compilations of the health laws of the State.[12] While some of these are

[12] See Tobey, J. A.: A Bibliography of References to Health Legislation. Reprint No. 684 (1921). U. S. Public Health Service, Washington, D. C.

excellent, being accurate and reissued frequently, most of them are not kept up to date and often contain important omissions or mistakes. These pamphlets are valuable for reference but should not be taken as final authority, and use should be made of the official volumes as previously mentioned.

The next step is to decide whether to: (1) repeal existing law; (2) amend existing law; or (3) write a new law. As a general proposition, the amendment is the best procedure if it is possible to use it. This prevents the confusion attendant upon the enactment of independent statutes on subjects already covered by general legislation, and simplifies codes, but all amendments must be properly coordinated with all laws which they affect.

TECHNICAL ASSISTANCE NECESSARY

Since the drafting of good legislation is a highly technical task, expert assistance is generally necessary. John Stuart Mill wrote, "There is hardly any kind of intellectual work which so much needs to be done, not only by experienced and exercised minds, but by minds trained to the task through long and laborious study, as the business of lawmaking." Today many of the States have legislative drafting services at their Capitols. Sometimes these are connected with State Libraries, a useful arrangement, for often much research is desirable. Anyone can prepare a bill, of course, and usually a legislator can be induced to introduce it, but not many persons know how to write laws which are clear, legal, scientific, and generally foolproof. The attorney general's office will usually render an opinion on a proposed bill or regulation and many local health departments make it a custom to submit all proposed ordinances to this officer for criticism and correction. A lawyer familiar with legislative drafting in the State may also be consulted, but not all attorneys are experts in this branch of work. Theoretically, better legislation would result if all new bills

were written first by a person familiar with the technical aspects of the subject involved, then gone over by a professor of English composition, finally reviewed by a competent lawyer, and then rewritten by all three in conference. If destructive amendments could then be avoided on the part of the Legislature during debate on the bill, this system would produce the best results.

Imitation of the laws in another State, apparently often indulged in, is not as a general rule a good procedure.[13] Because a law is on the statute books of one State, it does not necessarily follow that it is either a good law or will apply to other States. If, however, a health law of one State had been tested in the courts and upheld entirely as legal and constitutional, this fact shows that it probably is a good law and much assistance may be gleaned from its provisions. Even then it may not be wise to use it verbatim. The use of model legislation prepared by national health agencies may be worth while. Assistance in writing tuberculosis laws may be obtained from the National Tuberculosis Association, in prevention of blindness legislation from the National Committee for the Prevention of Blindness, and in social hygiene from the American Social Hygiene Association. The American Public Health Association has an excellent model health code for cities, and other members of the National Health Council (370 Seventh Avenue, New York City) can often render valuable aid when new health legislation is being considered. A list of model health laws may be obtained in the Bibliography of Health Legislation issued by the United States Public Health Service.[14]

THE ACTUAL DRAFTING OF LEGISLATION[15]

Many State Constitutions or statutes impose definite requirements regarding form, substance and other matters

[13] Notes on Bill Drafting in Illinois. State Legislative Reference Bureau (1920).

[14] See (12) above.

[15] See Jones, C. L.: Statute Law Making (1912).

relating to legislation.[16] It will, naturally, be helpful if the writer of legislation is familiar with these provisions.

The essential features of a satisfactory bill were outlined by a committee of the American Bar Association[17] a few years ago, as follows:

1. Conformity to constitutional requirements.
2. Adequacy of the provisions of the law to its purpose.
3. Coördination with existing law.
4. The utmost simplicity of form consistent with certainty.

Every bill consists of several parts, including: preamble (sometimes), title, enacting clause, body of bill, penalty (sometimes), date of beginning operation, and repealing clause (sometimes). Preambles should be omitted. The body of the bill if properly drawn will tell exactly what it is all about without wasting space and time with several "whereas's." The best practise also leaves out all headnotes.

The title should, as a rule, be fitted to the bill after it has been written and should actually express the contents and subject of the bill. It should be brief and well worded, but long enough to do justice to the material contained. No bill should ever embrace more than one subject and this should be expressed in the title. Many States have constitutional

[16] As an example may be cited Article IV, Section VII of the Constitution of the State of New Jersey, which reads as follows:

"To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No general law shall embrace any provision of a private, special, or local character. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law or any part thereof, shall be applicable, except by inserting it in such act.

"The laws of this State shall begin in the following style; 'Be it enacted by the Senate and General Assembly of the State of New Jersey.' "

[17] Final Report of the Special Committee on Legislative Drafting (1921). This whole report is of inestimable value to anyone interested in this subject.

or statutory provisions to this effect, but whether they do or not, it is a good principle to follow. Examples of proper titles are: "(A Bill for) An Act to Provide for the Regulation of Milk and Milk Products." "An Act to Amend an Act Entitled 'An Act to Provide for the Reporting of Certain Communicable Diseases,' approved March 7, 1917, in force July 1, 1917."

The enacting clause must often follow a prescribed form, as "Be it enacted by the People of the State of Illinois, represented in the General Assembly," or "Be it enacted by the legislature of the State of ——." The proper form can be easily ascertained and followed. The enacting clause is not a part of the body of the bill and is a mere matter of form.

THE SUBJECT MATTER[18]

The body of the bill, or the actual subject matter, is the most important part. The bill must be complete either by giving everything itself or by specific reference to other existing legislation. For instance, a bill may state: "On and after January 1, 1926, all persons who sell bottled water for human consumption shall secure licenses. Such licenses shall be issued in the same manner and under the same conditions as those provided for in Chapter 61 of the Acts of 1918 (Compiled Statutes of 1919, Article VI, Number 1181)."[19] No act can be revived or amended merely by reference to its title, but only by changing the wording, adding sections, or by repealing sections.

The primary consideration in drafting the body of a bill is to make it as short, direct, and precise as possible. For many years legislation, like medicine, has been surrounded by a mysticism which has tried to superimpose upon it a vocabulary of its own. It is unnecessary, however, to use

[18] See Patterson, R. G.: The shaping and Promotion of Health Legislation. Hospital Social Service, January, 1924.

[19] In some States it is necessary to repeat the act referred to. See (16) above.

anything except exceedingly plain and straightforward rhetoric. If it is desired that syphilis be made a reportable disease, it can be so declared in about a dozen words: "Syphilis shall hereafter be reported to the State Health Department by all physicians." Further provisions regarding methods, etc., can be added. It is not necessary to write it like this: "That one of the venereal diseases commonly known and designated by the name of syphilis, a dangerous contagious and infectious disease, being a menace to health in this State, shall hereafter and henceforth be reported by all physicians of the State directly to the State Department of Health in order that proper and adequate measures may be taken by said department for the complete suppression, prevention and eradication of such disease." This last effusion, which is not at all overdrawn, not only actually says no more than the first but mumbles something about taking measures, without in the least indicating or implying what they might be. As Elihu Root once said, "There is a useless law suit in every useless word of a statute and every loose, sloppy phrase plays the part of the typhoid carrier." That is a good simile in connection with this material on health legislation.

Affirmative language is considered preferable to negative, as a general proposition. Whether a bill should be mandatory or permissive depends upon the conditions which it is desired to correct or regulate. The word "shall" is generally used for mandatory provisions and "may" for permissive. Sometimes, of course, "shall" is used to express futurity and then there may be a question as to its meaning. The nature of the act to be performed, however, often governs the interpretation of a statute regardless of whether "shall" or "may" is used. The words should, nevertheless, be employed in their correct sense at all times in drafting legislation. Words should never be used in more than one sense in the course of a bill, as this is most confusing.

Arrangement of subject matter is likewise important. It

should be logical and orderly. The well-known rhetorical rules of unity, coherence, and emphasis should be employed. For instance, suppose a bill purports to outline the duties of a local health officer. It could be written something like this, omitting preliminaries:—

. . . . His duties shall be:

1. To act as secretary of the board of health.
2. To act as registrar of vital statistics.
3. To execute and enforce all regulations and orders of the board of health.
4. To investigate immediately the cause of all cases of communicable diseases and to take all necessary steps to prevent their spread, in accordance with the rules of the board of health.

Etc., etc.

It is not so much the substance as the form which we wish to illustrate in the above. By putting each duty separately in a numbered paragraph, and restricting one subject to one periodic sentence, clarity and efficiency are obtained and understanding is fostered. The whole might have been mixed and jumbled in one long unwieldy sentence. It is obvious as to which is better. Such numbered sentences, or even phrases, may, if desired be called sections. A very long and complex bill, as may occasionally be required, should have a table of contents (separate from the title), and also be divided into sections, each with an appropriate heading corresponding to the table of contents.[20]

FAULTS TO AVOID

Obscurity, ambiguity, equivocation are faults to be avoided, and this can be accomplished by attention to the ordinary rules of composition. Repetition and redundancy are common errors. References must be clear. Provisos are generally complicating, for to outline what may or may

[20] Examples of well drafted legislation are the standard laws prepared by the National Conference of Commissioners on Uniform State Laws. The Public Health Law of New York State is one of the best on that subject.

not be done legally and then qualify it with one or more "provided thats" is always somewhat confusing. An example of the wrong way is, "Any physician who fails to report any of the diseases mentioned shall be subject to a fine in the discretion of the court, provided that no such fine shall exceed $100; and provided further that if such disease occur in a hospital it shall be the duty of the superintendent, whether a physician or otherwise, to report such disease under penalty of the aforesaid fine." Here, the second proviso would have been better incorporated in the first portion and the limitation of the fine after an unlimited one had been authorized is bewildering. This bill should have been written thus: "Any physician or superintendent of a hospital who fails to report any of the diseases mentioned shall be subject to a fine not to exceed $100." How much more simple and clear!

Common sense and preciseness are worthy attributes of any bill. A western state is asserted to have this gem on its statute books, "when two trains approach a crossing at the same time, both shall stop and neither shall proceed until the other has passed by." In Massachusetts, according to one writer[21] there is a municipal ordinance which states that: "Any person who owns or occupies property abutting on a public sewer shall be connected with the same under penalty for neglect so to do of a fine not to exceed one hundred dollars." Punctuation is relatively unimportant when laws are construed, but the ordinary accepted rules of grammar should, nevertheless, be employed. A misplaced or missing comma has been known to wreck havoc in a well meant piece of legislation and a semi-colon once nearly ruined a whole State. Lucidity and rationality are much to be coveted in legislation.

Ample and definite provisions for enforcement should be contained in a bill.[22] Definite requirements regarding vac-

[21] York, A. C.: How to Draw up Public Health Laws and Regulations. Massachusetts Commonwealth, April-May-June, 1924.

[22] See Chapter XIV, page 206.

cination may be given, but absolutely no mention made of any penalty for failure to follow them, nor of any action which can be taken. The act would, therefore, be a dead letter, for nothing could be done about it if it is not adhered to. As much discretion as possible should always be given to administrative or ministerial officers to carry out the terms of any health legislation. A health official can not, under the theory of the separation of powers, be given legislative or judicial authority, but he may be given quasi-judicial powers, as for instance, in the determination of nuisances. All bills should provide for uniformity of operation, that is, the same effect in all places under the same circumstances and conditions.

A repealing clause stating that "all laws inconsistent with this act are hereby repealed" is fashionable, but, like a preamble, is often a waste of space. All such previous inconsistent laws are automatically repealed and no mention is necessary. It may, however, be wise to denominate some particular act which it is intended to repeal. For instance, it could be stated, "Chapter 4 of the Acts of 1913 is hereby repealed," or "Sections 1, 3, 4, 7, and 14 of Chapter 8 of the Acts of 1917 are hereby repealed." Sometimes it is a moot point whether new legislation repeals old or not and eventually the courts may have that to decide.

Finally, and most important of all, the subject matter must be reasonable and within the scope of authority of the law making body. The criterion of all valid health legislation is its reasonableness. Every State law must also be consistent with the Federal Constitution, all Congressional enactments and Federal treaties, and with the State Constitution. Whether a bill fulfills these requirements is a matter generally to be determined by competent legal authority.

The United States Supreme Court has said,[23]

[23] Sullivan v. Shreveport (1919), 251 U. S. 169, 40 S. Ct. 102, 64 L. Ed. 205. See also Schulte v. Fitch (Mich. 1925), 202 N. W. 719.

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Every intendment is to be made in favor of the lawfulness of the exercise of municipal power in making regulations to promote the public health and safety, and it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community.

CONSTRUING STATUTES[24]

A brief outline of some of the considerations which influence the courts in their interpretation of statutes may be of value in helping to point the way to draft valid health legislation. The principal rule of construction is that the exact intention of the legislative must be ascertained, a task which is sometimes anything but simple. The language is carefully considered and its natural import taken. Words are given their ordinary popular meaning, but technical terms are interpreted according to their meaning in the science to which they apply. The Court unfortunately cannot supply deficiencies in the language nor make material changes to expand the meaning. If a law is capable of two interpretations, one absurd and the other reasonable, the latter will be presumed to have been intended, even if it was not.

The statute will always be considered as a whole, so as to harmonize all of its provisions. Words and phrases[25] may, therefore, be interpreted with a view to the entire context. The title may assist in interpreting the object and meaning of the act, but otherwise carries no weight, unless the language is particularly ambiguous. Courts generally disregard faulty punctuation and grammatical construction. Where there have been other statutes of a similar nature or dealing with parallel or similar subjects, the construction previously placed on these will be considered. All statutes are, moreover, to be interpreted in the light of the unwritten law, the common law. Health laws will generally be liberally con-

[24] See Federal Statutes Annotated, Volume 1 (2nd Ed. 1916).

[25] See Words and Phrases (a law dictionary giving definitions as set forth by the courts (1904–5).

strued unless they seem to contravene individual constitutional rights when they will be more strictly construed. Penal statutes are more strictly constructed than nonpenal. If, after all the rules of construction have been applied to a statute, no sense can be made out of it, it is void. Likewise, if improperly passed, it is void.

It has been held in one case[26] that in determining whether a statute if valid as a health regulation under the police power, the criterion is whether the public health in general will be promoted by the regulation and not whether it is required to promote the public health in isolated cases.

AFTER A BILL HAS BEEN DRAFTED

After legislation has been properly and scientifically prepared, the next step, of course, is to get it through the legislature. A measure before the legislature is called a "bill"; after it has been passed and enacted, it is an "act." Every bill must go through a certain routine procedure, before becoming a law. This varies in the different States, but there is a more or less general method, patterned after the procedure in Congress.

Congress is established by Article I of the Federal Constitution[27] and its powers are enumerated therein. The framers of our government intended that the Senate should represent the States and the House of Representatives the people, but they gave to each branch equal powers of legislation, and no bill can become a law without the assent of both the House and the Senate. Bills may originate in either branch, except that measures for raising revenue must have origin in the House. Frequently, identical bills are introduced simultaneously in both houses. Sometimes a bill is suggested or drafted by a citizen and given to a member of Congress to present. Any member may introduce a bill in his own name. Both houses have legislative

[26] Benz v. Kremer (1910), 125 N. W. 99, 142 Wis. 1, 26 L. R. A. (N. S.) 842.
[27] See Appendix I, page 241.

drafting services which attempt to set forth bills in accepted legislative phraseology.

IN THE SENATE

The Senate consists of ninety-six members, two from each State. A Senator who desires to introduce a bill must rise, be recognized by the Vice President, who presides over the Senate, and announce that he wishes to introduce a bill. It is then deposited beside the Vice-President's desk, later read by a clerk and referred to the proper committee. There were in 1925 thirty-four committees of the Senate. The bill is considered by the commitee, which may hold public hearings on it. The Committee may then do one of four things: (1) report the bill favorably as it stands, (2) report it favorably with amendments, (3) report it unfavorably, (4) take no action at all. The number of bills introduced in Congress is legion. In one Congress from 2,000 to 20,000 bills and resolutions may be presented, depending, of course, upon the length of the sessions. Many of these bills never get out of committee. Usually this means that the bill has no chance of passage, but once in a while a motion is made that a committee be discharged from consideration of the bill, with the result that the bill is brought directly before the Senate.

When a bill is reported, it then goes upon the calendar. Under certain conditions, as where a bill is of especial importance, it may be called up out of order, but this is rare. When the measure does come up, it is open to debate. There is no time limit in the Senate. Amendments may be offered on the floor. After debate, the amendments and then the bill are voted on by calling for the ayes and noes, or by *viva voce* vote. If it passes, it is sent to the House for concurrence.

IN THE HOUSE

There are 435 members of the House of Representatives. The procedure in dealing with bills originally brought up in

the House is, in general, similar to that of the Senate. There are a few differences, however. The member introducing the bill simply drops it in a basket beside the Speaker's desk. It is referred to one of the sixty or more House Committees, and goes through the same course as in the Senate. There are three calendars in the House, the Union Calendar, relating to revenue, appropriations, and public property; the House Calendar, carrying other public bills; and the Private Calendar, consisting of private bills. When the bill comes up, the House forms the Committee of the Whole House. Time for debate is limited. Amendments may be offered from the floor. The amendments and the bill are finally voted on by *viva voce* vote, rising vote, taking the vote by tellers, or recording the ayes and nays, according to the demand of the House. If the bill is passed it goes to the Senate for concurrence.

BILLS PASSED BY ONE BRANCH AND BEFORE THE OTHER

When a bill which has already passed one branch of Congress is laid before the other, it may be passed as it is; amended and passed; left in committee; or rejected. If passed, it goes to the President. If amended, it goes back to the original branch for concurrence in the amendments, which may be done at once. If there is disagreement, each chamber appoints three members to form a conference committee to meet and settle the differences. The report is laid before each house, which may adopt it or disagree. Conferences are again held and this process is continued until both Senate and House have agreed on the measure. It then goes to the President, as an enrolled bill.

BEFORE THE PRESIDENT

The President has ten days, exclusive of Sundays and holidays, in which to take action. If he signs the bill, or fails to sign it within that period, the bill becomes a law and is known as an Act. The Act is sent to the Secretary of State to be numbered and filed as the original copy of the

law. He, in turn, forwards a copy to the Public Printer to be printed for public use. The President may veto the bill, in which case it goes back to Congress with a written statement of his objections. Congress may, however, pass the bill over his veto by a two-thirds majority in each branch.

The exact method in use in each State can usually be ascertained without great difficulty.[28]

MUNICIPAL ORDINANCES AND REGULATIONS

Municipal legislation with relation to the public health may be of two types; that passed by the municipal authorities themselves, such as the council, board of alderman, etc.; or that passed by the board of health. The respective powers of both of these governing bodies are usually set forth in the municipal charter, or by State law. It is sometimes a matter of expediency as which shall legislate, such items as the amount of allowable penalty being a factor. While boards of health have wide authority, they may not, as a general rule, pass any regulation contrary to one passed by the governing body of the municipality.

Ordinances or regulations of boards of health must be passed in strict conformity to the requirements for their promulgation as laid bown by State law. It is customary, of course, that they should be passed only at a duly called meeting of the board, at which a quorum is present. As a rule, several readings are required, usually three, with intervals between them. Publication of the proposed ordinance in a local newspaper is usually required and the public is entitled to be present at the board meeting and discuss the ordinance before it is passed. Local ordinances should be as carefully framed as State laws, as explained earlier in this chapter. Only matters which it is intended to enforce should be placed in a local sanitary code and then these should be enforced and not be permitted to become decorative only.

[28] See Luce, R.: Legislative Procedure (1922), Houghton Mifflin.

The National League of Women Voters, Washington, D. C., has a useful pamphlet entitled "Federal and State Law-making bodies" (1925).

CHAPTER XIV

Law Enforcement

The discussion so far in this book has been concerned largely with the substantive law in its public health aspects. The substantive law, as distinguished from adjective law, is that which deals with the powers and rights of the State as a sovereignty, and with the duties, obligations, rights, and privileges of individual members of society. This chapter will consider the relation of the adjective law to public health. The adjective law is that which deals with the remedies to be applied when a legal right has been violated, and also with the methods of procedure by which these remedies are administered. As one author has pertinently expressed it, using an analogy between law and medicine, "the remedies of the law are the materials which are designed to heal the wounded rights of individuals."[1]

Law enforcement is to a considerable degree a matter for the courts, though as has been shown, health officials who are administrative officers, have a wide latitude of authority and may often legitimately act in a summary manner. The action of an officer of the executive branch of government is practically never final, however, and there always remains an appeal to the courts. This does not mean that the court will necessarily reverse the act of the executive official, but every man is entitled to his day in court, and he may bring suit in order to obtain what he considers to be justice for an infringment of his legal rights. This is due to process of law. The relative functions of the three coördinate branches of government in this country have been explained in Chapter II.

[1] Clark, W. L.: Outlines for Review (1924).

COURTS IN GENERAL

A court, according to Blackstone, is a place where justice is judicially administered. It may be a court of record, where formal records are kept for perpetual testimony and are entitled to be received as authoritative evidence by other courts; or it may be a court not of record, generally an inferior one. The court may have general or special jurisdiction. There are, for instance, certain courts whose sole jurisdiction is over minors, as the juvenile courts; or over domestic relations; or wills; or some other special phase of law, or classes of persons or things. When all the special problems have been parcelled out, however, there always must remain at least one court of general jurisdiction.

The jurisdiction of the courts may be original or appellate. The former is for the hearing of all controversies as they arise, while the latter is for review of the decisions of lower courts. The right of reasonable appeal to higher tribunals is a well recognized one in this country. The court may, finally, have either exclusive or concurrent jurisdiction. Exclusive jurisdiction means that a particular controversy can be tried in the first instance only in that court, as for instance, a matter of sex delinquency might be tried only in a Morals Court in a particular State where such a court had been established by statute. Concurrent jurisdiction means that two or more courts have power to hear and determine the same cause of action. When this is the case, the plaintiff may elect which to choose. The party beginning a suit or action is called the plaintiff in civil cases, and the prosecution in criminal cases, while his opponent is the defendant.

With this brief general statement concerning courts, a more specific description of Federal, State, and Municipal courts will be given with the relationships of public health matters to each. These will be taken up from the top down, that is, from the highest to the lowest.

FEDERAL COURTS

The highest tribunal in this country is the United States Supreme Court, which is established by the Constitution itself. The Supreme Court has original jurisdiction over certain controversies, such, for example, as those arising between the States. Its principal jurisdiction, however, is appellate, as it may review cases coming from inferior Federal courts and from the highest courts of the States when any matter involving the Federal Constitution is concerned. Thus, if one State believes that a stream between it and an adjoining State is so badly polluted by the latter as to endanger the health of its citizens, an original suit could be brought in the United States Supreme Court, just as has actually been done in a number of such instances.[2] If in a controversy between a health department and an individual, the latter believes that a right guaranteed by the Federal Constitution has been violated and having gone through several State Courts, the highest court in his State decides against him, he may appeal to the United States Supreme Court. As a matter of fact, out of about 30,000 cases which have been adjudicated by this court up to 1925, it is estimated by the author that at least 100 have dealt directly with the public health. A vast number of others have, of course, had indirect influence on this subject.

The Constitution empowers Congress to establish inferior Federal Courts. The Judiciary Act of 1789, which has since been modified and amended, has done this. The country has been divided into nine circuits, each having a Circuit Court of Appeals; each circuit is divided into districts having a Federal District Court, of which there are now eighty. The Circuit Courts of Appeal review cases coming from the District Courts. These latter have jurisdiction over con-

[2] Louisiana v. Texas (1900), 176 U. S. 1, 44 L. Ed. 347, 20 S. Ct. 251.
Missouri v. Illinois (1900), 180 U. S. 208, 45 L. Ed. 497.
Kansas v. Colorado (1901), 185 U. S. 125, 46 L. Ed. 838.
Missouri v. Illinois (1905), 200 U. S. 496, 50 L. Ed. 572.

troversies arising between citizens of different States, over matters arising under Federal laws, such as patents, bankruptcy, admiralty, prohibition, and certain other matters set forth in the Judicial Code.[3] Public health subjects coming before these courts would include matters of foreign or interstate quarantine (brought by individuals), actions under the Pure Food and Drug Act, Harrison Anti-Narcotic Act, and various other causes of action. A Federal court refused to allow an injunction against a State court which had upheld a vaccination ordinance in spite of the allegation that it transcended a Constitutional right.[4]

Other Federal courts include a Court of Claims, a Court of Customs Appeals, the courts of the District of Columbia and of the territories and possessions.

STATE COURTS

Names and types of State courts differ widely throughout the country, but in general it may be said that there is always one court of final appeal, one or more intermediate courts, and numerous inferior courts of general or special jurisdiction. The highest court is often known as the Court of Appeals, though in many States it is called the Supreme Court. A number of States make provision for intermediate courts of appeal. In New York, for instance, the highest tribunal is the Court of Appeals. Below this is the Supreme Court, which has an Appellate Division. The courts of general original jurisdiction in the States are variously known as courts of common pleas, district courts, county courts, or circuit courts. Last and lowest of all are the courts held by magistrates, trial justices, or justices of the peace. There may also be special courts, as for probate, etc.

[3] The Judicial Code of the United States, in force Jan. 1, 1912 (as amended).

[4] Gillin v. Board of Public Education (Pa. 1918), 250 Fed. 649.

Violations of State health laws or regulations or sanitary codes would be brought in the first instance before one of these inferior State courts. To convict for violation of an order of the State board of health, the State must establish the existence of the order and its promulgation in accordance with the statutes. These are questions of fact for a jury.[5] Just which court handles these infringements depends upon the jurisdiction and procedure laid down by the statutes. Such actions should, of course, be instituted and conducted by a competent attorney, generally the attorney general, a State's attorney, or a city solicitor on behalf of the health authorities. The State may bring the action itself, or a municipality, as the agent of the State, may bring an action for violation of a State law or regulation. An individual can not bring such an action in his own name, but may assist the government by information, and he may be the prosecuting witness.

MUNICIPAL COURTS

Most cities have municipal courts, usually separate ones or with separate divisions for civil and criminal matters. The latter are frequently known as Police Courts. There may also be special types of courts, as Morals Courts, Juvenile Courts, and others. Towns, villages, and boroughs usually have local magistrates or police justices[6] who hold what corresponds to Police Courts. Violations of municipal health ordinances would be taken before these latter courts. They are often courts not of record, and in many instances are presided over by laymen, not lawyers, except in the larger metropolitan cities. As a matter of interest the fact may be cited that in 1922, 33,479 criminal violations of the Sanitary Code of New York City were disposed of in

[5] State v. Hall (Vt. 1923), 119 Atl. 884.

[6] Board of Health of Asbury Park v. N. Y. & L. B. R. Co. (1908), 77 N. J. L. 15, 71 Atl. 259.

the magistrates' and special sessions courts, in addition to 29,364 minor violations before district magistrates.[7]

JURIES[8]

In a trial for a crime, the accused is entitled to be tried by a jury. A crime is the commission or omission of any act forbidden or commanded by law, and punishable by the State in an action brought in its own name. The jury consists of twelve persons, whose function it is to determine the facts in the case. The judge rules on points of law. There are also juries in civil cases involving over certain amounts. Misdemeanors are usually tried before a magistrate without a jury, though in some cases a jury may be demanded. On account of the variance in procedure in different jurisdictions, it is impossible to outline methods which apply generally and these must be ascertained from the statutes for each locality.

GRAND JURIES

A grand jury is made up of from twelve to twenty three persons whose duty it is to examine the evidence against an individual accused of crime and determine therefrom whether an indictment shall be returned against the individual for trial in a court of law. The meetings of the grand jury are attended only by the witnesses and the prosecuting attorney. If twelve or more members believe that the evidence warrants criminal action, the charge is indorsed as a "true bill."

PENALTIES FOR VIOLATIONS

Every law or ordinance to be effective must provide for a penalty to be imposed in case of its violation. The penalty usually consists of a fine. Imprisonment can not be imposed by municipal boards as a penalty unless there is very

[7] Annual Report 1922, New York City Health Department.

[8] See Carswell, W. B.: A Primer for Jurors, New York Law Journal, February 3, 1925.

clear authority for such action.[9] As a general proposition, the penalty must be authorized by the legislature, either in specific or general terms. The power of local boards to fix penalties may arise by implication from the terms of the statute,[10] or health authorities may be allowed to prescribe penalties not to exceed a certain amount.[11] If the State law gives the exact sum of the penalty to be imposed, that must be followed. If no penalty is provided for in an ordinance, one can not be set following a violation in order to apply back to that particular act. Permission illegally given by one in authority is no excuse for the violation of an ordinance[12] and the intention or lack of it is no defense.[13]

When a local ordinance has been violated and it becomes necessary to bring the offender into court, assuming that all other methods of dealing with him have failed, the first step is to bring charges against him. The violation of health laws or regulations usually constitutes a misdemeanor, though in some instances it might be a more serious crime. In any event the action is a criminal one and is brought before a criminal court, usually an inferior one, as a Police Court, or magistrate. The municipal attorney, or sometimes the health officer himself, fills out a complaint form, often called an information, and turns it over to the magistrate. The information or other complaint must be precise and complete and where an order has been violated must give its terms or substance.[14] The magistrate issues a summons, which a constable or officer serves on the accused person, who is ordered by it to appear in court on such a day and hour. At the stated time a hearing is held, usually without

[9] Parker and Worthington on Public Health, Sec. 94 (1892).

[10] New Orleans v. Stein (1915), 137 La. 652, 69 So. 43.

[11] Carthage v. Colligan (1915), 216 N. Y. 217, 110 N. E. 439.

[12] New York Health Department v. Hamm (1893), 24 N. Y. S. 730.

[13] New York Health Department v. Sulzberger (1912), 78 Misc. 134, 137 N. Y. S. 998.

[14] State v. Tyrell (1924), 100 Conn. 101, 122 Atl. 924.

a jury and the issue decided, after hearing both parties and their witnesses. The accused may, of course, be represented by an attorney.

Under some State laws a local board of health itself may issue a warrant for an offender against the health ordinances or regulations, and summon him to appear before the board for a hearing. It may even sometimes impose a fine upon him, if found guilty, but if he refuses to pay, he must be sued for the amount of the fine before a local magistrate or justice. Other State laws occasionally require or imply that before action is taken, the accused should be accorded a hearing by the board of health. It is, in fact, always wise to hold such a hearing, not only in justice to the defendant, but also because it brings out his defense, which it is sometimes useful to know in advance. The desirability of a hearing does not, of course, preclude summary action without it, if the protection of the public health demands such a step.

An outline of the procedure to be followed when health laws or regulations have been violated is given in the New York law and is herewith presented as an excellent example of the general methods employed:

PUBLIC HEALTH LAW (NEW YORK)

(Laws 1909, ch. 49. Consol. Laws, ch. 45)

203. *Penalties and their collection.*

D. All courts of special sessions and police justices sitting as courts of special sessions shall have jurisdiction in the first instance to hear and determine all charges of misdemeanors mentioned in this article committed within their local jurisdiction, and to impose all the penalties provided for such misdemeanors; a judgment that the defendant pay a fine shall also direct that he be imprisoned until the fine be paid, specifying the extent of the imprisonment, which cannot exceed one day for every dollar of the fine imposed; provided, however, that the power of said courts and justices to hear and determine such charges shall be divested, if before the commencement of a trial before such court or justice, a grand jury shall present an indictment against the

accused person for the same offense, or if a justice of the supreme court or a county judge of the county shall grant a certificate in the manner provided by law in cases of misdemeanor, that it is reasonable that such charge be prosecuted by indictment. Any misdemeanor mentioned in this article for which a punishment is not specifically imposed shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or by both fine and imprisonment. Any person who shall violate any of the provisions of this article shall be subject to a penalty of one hundred dollars for each and every violation. Each act constituting a violation of this article shall be deemed to be a separate act, and the person guilty thereof shall be subject to a penalty of one hundred dollars for each such act. Where a violation consists of the unlawful practice of dentistry by a person, each day during which such unlawful practice continues shall constitute a separate violation and shall be subject to such penalty. Such penalties shall be recovered in an action brought therefor by the attorney-general in the supreme court in the county where the violation or any part thereof occurred. The provisions of the code of civil procedure and other laws relative to the recovery of penalties shall apply to actions brought for the recovery of penalties under this act. If judgment shall be recovered in an action brought for the recovery of such penalties, it shall be enforced by execution against the property and person of the judgment debtor, in the manner provided in the code of civil procedure. A right of action for the recovery of a penalty under this act may be settled or compromised by the attorney-general, either before or after proceedings are brought to recover such penalty and prior to the entry of judgment therefor. The penalties hereby imposed for a violation of the provisions of this article shall not in any way affect the liability of a person to punishment for a violation of this article upon prosecution therefor in a court of criminal jurisdiction. All prosecutions under this act shall be by the attorney-general in the name of the people of the state, and all fines may be paid to the board or sued for and recovered in the name of the people of the state in an action brought therefor by the attorney-general. (Amended by Laws 1916, ch. 129; Laws 1917, ch. 507, 1. In effect May 16, 1917.)

ACTIONS

The essential fact to remember in taking offenders to court is to have a thoroughly prepared case. It is necessary, in order to be successful, to be able to prove the case conclusively. This means that all the facts must be capable of

support by creditable witnesses. In a criminal trial the defendant is entitled to the benefit of the doubt and his guilt must be established beyond a reasonable doubt.[15] A health officer should hesitate, therefore, before going into court with a case, unless he has good evidence to support it. Magistrates and judges of inferior municipal courts are not always great sticklers for technical points of law, but they generally insist upon having the facts proving guilt clearly demonstrated.

Suppose, for instance, that a local ordinance prohibited sale within the city of X of milk from any dairy not approved by the health authorities, such an ordinance being consistent with State law. A local milk dealer is suspected of procuring milk from a particularly filthy place and selling it within the city. The health officer instructs two sanitary inspectors to get the evidence. In an automobile they trail the dealer to the forbidden farm, see him load his truck with a number of cans of milk, and, satisfied that they have the evidence, return home. When the case comes up in court, the milk dealer admits that he went as the inspectors have testified and got the dirty milk, but swears that he did not sell it, but fed it to his pigs. Or he may swear that he did not sell this particular milk within the city of X, but in some other locality. His attorney may even introduce witnesses to support these contentions. Who is to prove that he is wrong? For lack of definite proof, that he has sold the milk as charged, he would be acquitted, or discharged.

If the inspectors had trailed the dealer back to his plant and in some way seen him transfer the milk into bottles and then caught him in the act of selling this same milk within the city limits they would have had a perfect case, as far as the evidence was concerned. Losing a court action always lowers the prestige of the health department somewhat,

[15] State v. Racskowski (1913), 86 Conn. 677, 86 Atl. 606, 45 L. R. A. (N. S.) 580, Ann. Cas. 1914 B, 410.

although if the department is strong and has public confidence, the mere accusation of wrong doing against a milk purveyor or other person will sometimes turn the public against him and so force him out of business. Whether this is just or expedient is a matter of local determination.

It is always difficult to prove that a physician has failed to report a birth, death, or case of communicable disease according to law, because he can always swear he deposited his report in the mail. If he actually did that, he has complied with the law, as mailing a letter is a delivery of a report. Who is to prove that he did not mail it? It is, of course, not difficult to prove tardiness in reporting, but this is hardly a serious enough matter for court action, except possibly in the case of a chronic, persistent, or deliberate offender. In prosecuting a physician for failure to report a case of communicable disease, evidence showing the existence of previous cases in the same vicinity was admitted by a court as tending to raise the inference that the physician recognized the present case.[16]

EVIDENCE AND WITNESSES

Evidence is that which is legally submitted to a competent tribunal as a means of ascertaining the truth of any alleged fact under investigation before it. Proof is the effect of evidence. Testimony is the statement of a witness. Such declarations must concern actual facts which have been apparent to the senses of the witness and they can not properly include opinions or hearsay. There is, of course, some evidence which borders on opinion, as a statement that a person appeared sick or intoxicated, was suffering pain, or seemed insane. The weight which any testimony carries depends upon the subject matter, the way it is presented by the witness and his apparent intelligence and good faith. Every witness must take an oath to tell the truth before testifying. A witness first testifies on direct examination,

[16] State v. Pierce (1913), 87 Vt. 144, 88 Atl. 740.

being interrogated by the attorney of the side which has called him, and then is cross-examined by opposing counsel.

This outline is a sketchy one of some phases of evidence, but a more extended treatment would be out of place here, as it is a matter largely for the attorneys, and there are many adequate treatises on the subject.[17] Health officers are often required to testify as witnesses in action brought for violations of health laws. About the only advice which can be given is to suggest that testimony consist of a veracious statement of the exact facts, without attempting to color them in favor of the health officer's or any other side of the case.

EXPERT WITNESSES

An expert witness is "one who has made the subject upon which he gives his opinion, a matter of particular study, practice or observation, and who has a particular knowledge on the subject which must be recognized in law as a distinct department of human knowledge and endeavor."[18] Health officers, sanitarians, and physicians are often called upon to give expert testimony. Unlike ordinary testimony, which must deal with facts, expert evidence is made up of opinions. The expert must first be qualified as such by preliminary questioning and must show that he is really expert upon the question in issue. His opinion may be founded on information based on his own examination of persons or things involved, or it may be developed by hearing the testimony in court, or it may be in reply to a hypothetical question. The last is a question propounded by counsel setting forth certain facts which are assumed to be true and upon which an opinion is asked. For instance, a sanitarian, testifying as an expert might be asked, "If ten cases of smallpox developed in three days in a city of 10,000 population, where no cases of this disease had appeared for eight years

[17] See Greenleaf on Evidence (16th Ed. 1899); McKelvey on Evidence (1907); Wellman, F. L.: The Art of Cross Examination (1924).

[18] Brothers on Medical Jurisprudence (1914).

immediately preceding, would this be an epidemic or an emergency?" The answer, which obviously would be yes, would be an expert opinion. Counsel for the other side would, of course, have an opportunity to cross-examine the witness. A person who attempts to testify as an expert should, of course, have a thorough knowledge of his subject and also an understanding with the attorney for whom he is appearing as to the nature of his testimony. A physician may testify as to matters connected with medical science, even if he has not made a special study of the matter in question.

INJUNCTIONS

An injunction, as previously explained,[19] is an equitable remedy which, in the absence of an adequate legal remedy, operates to restrain or prevent an improper act from being done. The way in which an injunction may be used to prevent a nuisance has also been outlined previously.[20] In several jurisdictions, health authorities are empowered to enjoin by a court order an act which threatens to menace the public health, even before the actual injury is inflicted.[21] A recent case has held that in Missouri, State circuit courts have full power to enjoin the maintenance of a nuisance which affects health,[22] and similar courts in other States, having equity jurisdiction, would have the power to issue injunctions for this purpose. The possibility that a hospital will become a nuisance has been held not to be ground for an injunction against its erection.[23]

REMEDIES AGAINST HEALTH AUTHORITIES

Just as health authorities may employ certain court actions against those who violate health laws and ordi-

[19] See Chapter I, page 8.
[20] See Chapter VIII, page 126.
[21] 29 Corpus Juris 268 and cases cited.
[22] Ex parte Gounis (Mo. 1924), 263 S. W. 988.
[23] Ayars v. Wyoming Valley Hospital (1922), 274 Pa. 309, 118 Atl. 426. City of Wilmington v. Turk (Del. 1925), 129 Atl. 512.

nances, so too individuals have various remedies against health authorities who are oppressive, negligent, derelict in duty, or otherwise illegal in their duties. These remedies are often outlined in the statutes and where this is the case, must be followed as provided by law. Appeal from the actions brought by health authorities is often provided by law. Where liberty of an individual is interfered with, as by arrest or quarantine, habeas corpus may be invoked, as explained in Chapter VII.[24]

Where some procedure has been taken by health authorities, which it is believed is unlawful, the writ of certiorari may be asked in a court of record. Certiorari is used to review a judicial or quasi-judicial decision, and may be issued in the discretion of a court superior to the court or executive board which has performed the act which is questioned. Certiorari is not the writ employed to determine title to office,[25] however. Quo warranto is used for this purpose.

When health authorities do not perform duties which they should, the writ of mandamus may be utilized. This is a command in the name of the State, directed by a court of record to some tribunal, corporation, public board or officer, requiring such board or person to do some act therein specified which it was, in the opinion of the court, the duty of the board or person to perform. Thus, a board of health may refuse to issue a license and the person claiming it may seek to compel the board by mandamus to issue it. Mandamus may be used to compel payment of legitimate expenses by a board,[26] or to enforce observance of ministerial duties by an officer.

If health authorities so proceed as to create a nuisance or perform fraudulent or oppressive acts, the equitable remedy of injunction may sometimes be invoked against them.[27]

[24] See Chapter VII, page 114. Also Chapter IX, page 138.

[25] Clay v. Civil Service Commission (1916), 89 N. J. L. 194, 98 Atl. 312.

[26] See Chapter XI, page 168.

[27] Chase v. Middleton (1900), 123 Mich. 647, 82 N. W. 612.

This will be denied if there is a remedy at law, however, and courts will usually hesitate to restrain the acts of health authorities unless it is clearly shown that bad faith or illegality is present. Otherwise, the protection or promotion of the public health might be defeated.

CHAPTER XV

A Summary and Comment

WHAT IS PUBLIC HEALTH LAW?

Definition and scope

Public health law is that branch of jurisprudence which deals with the application of common and statutory law to the principles of hygiene and sanitary science. Comprised of both the written and the unwritten law, applying the rules of law and equity as occasion demands, it is as broad in scope as is public health itself. Modern public health is the science and art of disease prevention, life prolongation, health promotion, and all those things which are related thereto. It draws upon preventive medicine, sanitary engineering, sociology, economics, and statistics for its component parts, and so sanitary law must also be concerned with these subjects in their public health aspects. Public health law likewise treats of the relations between citizens and the State, of the public and private interrelationships of individuals, and of the rights and duties of all persons under the Federal Constitution as it affects the sovereign power of the States to utilize those measures which are essential to health conservation and the protection of the lives and physical welfare of all the people.

The preceding chapters in this book have consisted mainly of an exposition of the fundamental legal principles in different circumstances involving the public health, with some discussion of the theories underlying these situations. There have also been some descriptions of various features of the law as it applies to public health administration in a practical way. The legal principles as set forth have been deduced from the written law, as expressed in constitutions

and statutes, and from the unwritten law, made up of the English common law and the decisions of American courts of last resort, whose function it is to apply and interpret with the aid of the common law the statutory provisions promulgated by the legislative and carried out by the executive branches of our tripartite system of government.

This final chapter attempts to summarize concisely the whole field of public health law and to comment upon the present use of it and the manner in which it should be utilized. Obviously, in such a succinct outline, only the chief features of public health law can be discussed and no details are possible.

Source of the American law of public health

The general principles of law which apply to public health in all of its ramifications in the United States are to be found in the common law which the colonists brought with them from England, in the Federal constitution and certain laws and treaties of the national government, in State constitutions and State laws, and in the ordinances and regulations passed by political subdivisions of the State. The powers granted to the Federal government, the rights retained by the people, and the restrictions or privileges which they have written into their State constitutions and laws all contain matters which affect intercourse between individuals and relations between citizens and their sovereignty, and so directly or indirectly influence the health of the public. Many laws, of course, have been adopted with this end primarily in view, the care of the public health having always been recognized as an inherent right and duty of any organized society.

The need for coördination and standards

In the early days of the colonies there were passed a number of statutes which had some influence on the public health, though in many instances these laws dealt only with the practice of medicine, or the collection of vital statistics

for legal purposes. Quarantine acts were sometimes passed in order to cope with epidemics and other conditions which were considered to be temporary emergencies. Local health organization was not provided for until the end of the eighteenth century and State health administration began only by the middle and latter part of the nineteenth. From that time on many written laws on health have been promulgated by the States. One State has often copied statutes of another, but there is, in general, little uniformity, with the possible exception of the modern vital statistics laws. Neither are the various laws always adequate or scientific, according to present ideas of public health procedure. The need for coördination and, as far as possible, standardization, of these varying laws is apparent. Analysis and codification of them are tasks now (1925) awaiting the initiative of some official agency or public spirited voluntary health association.

PUBLIC HEALTH PRIMARILY A STATE FUNCTION

The administration of public health activities in the United States is primarily vested in the individual States. This is so because the protection of health is a part of the police power, that inherent power of a government to enact laws, within constitutional limitations, to promote the health, safety, morals, order, comfort, and general welfare of the people. The police power may be employed for the benefit of the people as a whole, to restrain the use of the liberty and the property of individuals, for it is founded on the maxim, "the greatest good to the greatest number." The States possessed this police power before the Federal Constitution was established in 1789 and they did not relinquish the right at that time, nor have they done so since. They can not, in fact, divest themselves of the police power.

Federal health activities and their correlation

While the protection of the public health is and must remain vested primarily in the States, the Federal government has, under the Constitution, certain legitimate health functions. These consist of the power over interstate and foreign commerce, whereby disease may be and is prevented from entering the country from without, and also from being transmitted between the States; authority over the District of Columbia, the territories, and Federal reservations, and the inhabitants thereof, the care of whose health is subject to Federal control; the power to levy taxes and to appropriate monies; and, finally, the treaty making power. In order to carry out these Federal health activities there have been created from time to time bureaus in the various executive departments of the national government. These bureaus have grown up and expanded, with little regard to one another, to meet the exigencies of various situations, as by giving medical relief to the wards of the government, administering pure food laws, supervising interstate and foreign quarantine, investigating child welfare, inspecting meat intended for shipment in interstate commerce, studying industrial hygiene, and by undertaking numerous other activities. At least thirty-five Federal bureaus having a direct or indirect interest in some phase of public health existed in 1925, though, of course, in only half a dozen instances was the public health interest the major function of the bureau.

The proper coördination of these scattered bureaus is the necessary next step in efficiency in the exercise of those Federal health duties which are legitimately carried on under the Constitution. Actual duplication of effort may not now be very great, because the field is extensive and the scope of Federal health work is wide, but opportunities for duplication and, what is of even greater importance, for inadequate filling of the gaps, are many and such instances sometimes occur.

The police power and its reasonable application to public health

The police power in its operation by the States is perhaps the broadest in scope of any of the powers of government. It is, nevertheless, subject to some limitations. These are expressed in various provisions of the Federal Constitution, especially those which comprise what is known as the bill of rights of individuals. When an act under the police power comes in conflict with one of these other provisions, such as the requirements for due process of law, equal protection of the laws, religious liberty, freedom of contract, or Federal control of interstate commerce, the operation of the police power will be upheld only if it is reasonable and properly calculated to enhance and promote the public health. If the act under the police power is unreasonable, it must give way to these other constitutional rights of citizens. This is as it should be. The protection of the public health is for the benefit of all and a restriction on the life, liberty, or property of a person is compensated for by the advantage accruing to him by the promotion thereby of the welfare of society as a whole, of which he is a member. Disease, unfortunately, is no recognizer of race, creed, social status, political right, nor of barrier or boundary. Its control must be unfettered by unnecessary constitutional inhibitions, but its control and promotion must and can always be reasonable, equitable, and just.

THE ADMINISTRATION OF PUBLIC HEALTH

State health departments and their organization

Public health, being a matter for the States, must be administered by them. To this end subdivisions of the executive branch of government, known as State health departments (or by similar appellations) have been created by the legislatures of the various States. The formation of such administrative units is proper and has been upheld

by the Courts. A state board of health is the customary organization, with an executive health officer. Undoubtedly the best system is to have a non-partizan public health council, the members of which are appointed in rotation by the governor, comprising a representative from the medical profession, a sanitary engineer, a lawyer, a business man, at least one woman and other public spirited citizens. The council should have the power to appoint and fix the salary of the State health officer, to remove him for cause; to promulgate necessary rules and regulations to carry out State health laws; to hold hearings; and to act in a general advisory capacity. As much discretion as possible should be delegated to the executive health officer, who should be a person adequately and completely trained in public health, preferably one having the degree of Doctor of Public Health from a reputable institution. This health officer should have the power to employ and dismiss for cause such subordinates as are necessary to the proper and efficient administration of the department.

Powers, duties, and functions of State health departments

The functions of a State health department consist properly of the following: the collection from local registrars of vital statistics, which are valuable for many legal as well as public health purposes; the State-wide control of the communicable diseases, by means of collection from local health authorities of morbidity reports, by epidemiological investigations, laboratory analyses, by supplying necessary biological products, and by general advice, information and assistance to local authorities; child hygiene activities, including supervision of midwives, prevention of blindness, supervision and operation of public health nursing, and school health supervision on a statewide basis; sanitary engineering, including investigation and control of public water supplies and waste disposal systems, and other matters dealing with the environment and its relation to State salu-

brity; the licensing of occupations, trades, and institutions relating directly to the public health; and popular health instruction. Industrial hygiene, control of food supplies, and mental hygiene may be proper functions of State health organizations, and there may be others which are due to special local conditions, peculiar to a particular State.

Mental hygiene

Mental hygiene as a branch of public health has only recently been receiving the attention which is due this important subject. Many of the present laws relating to the care of the so-called insane are archaic and out of harmony with modern scientific principles. The subject divides itself into two parts, the care of the non-criminal mental defective, and the care of the mentally disordered criminal. With respect to each, provisions for sufficient State machinery to cope with the problem are essential.

Methods of ascertaining the condition of non-criminal mental defectives, procedures for commitment, institutional care, release on probation when cured, and guardianship, are all matters for legal consideration. The system in some States whereby lay juries pass on technical questions of mental abnormality is particularly unscientific and backward. The best procedure is to place the determination of the necessity for institutional care for an individual under the jurisdiction of the State, through a division of mental diseases. Compulsory commitment should, however, be only on order from a court of record, which would normally accept the findings of the State department, though granting the individual his day in court. Whether such a division of mental diseases should be directly under the State health department or not is a question of policy to be decided by competent authorities.

In modern American criminal law the test for insanity is whether the accused possessed the power to chose between right and wrong at the time he committed the crime. The

ideal way to ascertain this important fact would seem to be by means of a complete examination made by a neutral and impartial State bureau of mental diseases. The wrong way is the one now usually employed, that of leaving to a lay jury to determine, after listening to the testimony of experts employed by the State and by the defendant whether the accused was mentally disordered when he committed the crime, or has subsequently become so. The whole problem of the motivation of human conduct, the administration of criminal justice, and, most important of all, the prevention of crime, is an extremely complex one needing for its solution the active coöperation of health officials, psychiatrists, attorneys and jurists, sociologists, and other scientists and civic workers.

Mental hygiene, now in the twilight zone of public health, is a proper field for consideration by sanitarians and health departments.

Sanitary districts and county health work

In order to assist in carrying out its public health functions, a State is sometimes divided into districts, with a State district health officer in charge of each. Such a district may embrace any territory which the legislature sees fit to assign to it and may even have the same boundaries as a county. A district health officer in the latter case has more power than the county health officer, for the powers of the former include all measures necessary to one acting directly as a State officer. While a county is also a political subdivision of the State, county officers, as a general proposition, have no direct jurisdiction over the affairs of incorporated municipalities within the county, though this is, of course, subject to statutory provisions, which are within the province of the legislature to set forth. County health organizations exist in many States, and these are directly under the jurisdiction of the county authorities, though, of course, subject to State laws. Whether to create county

health departments or not is a matter of policy. Undoubtedly they are of much value in rural regions.

Local public health administration and its results

The actual administration of public health can be most effectively consummated by a local subdivision of the State. The States have, therefore, exercised their proper right to delegate the operation of the police power to municipal corporations and other political agencies of the State. The extent of this delegation varies, being greater in some States than in others. It is accomplished by legislation requiring or permitting local health organization, usually consisting of a board of health with an executive health officer, although there has been some tendency of late to concentrate authority in a single health commissioner. It seems to be the consensus of opinion of sanitarians that a non-partizan, well qualified, public health council, whose members are appointed by the head of the local government so that only one or two can be replaced each year, with an executive chosen by this council for his professional qualifications, is the best system. Ex officio or political boards seldom work well, and there are also objections from the standpoint of possible political considerations to appointment of the health commissioner by the mayor. There are many factors involved, however, not the least of which are personalities, and either system may operate successfully. Students of government and political science seem perhaps to favor the abolition of boards and the substitution therefor of one-man control, assuming that the officer will be a properly qualified scientist, and responsible to some higher authority.

The powers and duties of local health departments are broad in scope and liberally construed by the courts. The essential consideration, however, is that these powers must always be reasonably applied. The right to make reasonable rules and regulations on any health subject seems to be inherent, though authority for it is usually given in State

laws. There must, of course, be some general or specific statutory authority which permits action by local health departments. Rules and regulations must, furthermore, be not inconsistent with State law, and, so long as consistent, may as a rule, be more stringent. The courts have the right to review such regulations, which when properly promulgated have the authority of the State, if they are palpably transcendent of the power delegated, or if there is patent an unwarranted abuse of the constitutional privileges of the people.

The scope of community health activities

The operation of local health departments may include any measures reasonably calculated to promote the health of the community. Thus, contracts, properly safeguarded, may be entered into, and expenditures may be authorized to the extent that monies have been made available by the municipal or other proper authorities. Persons may be employed to perform necessary duties, though sometimes employees and their duties are specifically mentioned in the statutes. The organization of the department is more a matter of administration than law, but is more likely to keep out of legal difficulties if it is an efficient one.

Community health activities, usually undertaken by local health departments, though occasionally distributed in several departments of the municipal government, should include the following, which are listed according to their relative importance, as determined by ratings formulated under the auspices of the American Public Health Association, in coöperation with the American Child Health Association, and other agencies:

1. Care of the health of the child up to school age, including prenatal, maternal, infant, and preschool hygiene.

2. Care of the health of the child in school, by weighing, physical examinations, correction of defects, sanitation, inculcation of health habits, and recreation.

3. Control of all communicable diseases, by methods hereinafter set forth.

4. Sanitation of the environment, including control of food, milk, water, sewage, and nuisances.

5. Maintenance of laboratory facilities.

6. Collection of vital statistics.

7. Popular health instruction,

Many of these functions overlap and there are, of course, other proper duties, warranted by local conditions. Most of these matters as outlined are discussed in some detail in the body of this book.

THE DUTIES AND FUNCTIONS OF HEALTH AUTHORITIES

Child hygiene

Since 1922 much of the health work in behalf of the child not yet of school age has been conducted on a State-wide basis, due to the passage of the Federal Maternity and Infancy Act of November 23, 1921. By the terms of this act, which is in force for five years, somewhat over a million dollars is appropriated annually to be allotted to the States accepting the act, according to population, provided the States appropriate an equal sum and comply with the provisions of the law. In 1925 forty-two States were receiving Federal subsidies under this act. Child hygiene activities, consisting of prenatal clinics, infant welfare stations, visits and instruction by public health nurses, and other work, were being undertaken in the States not accepting the act and also independently in many communities in all the States. Such local operation generally has the express or implied sanction of law.

School hygiene

School hygiene is often administered according to law under the direct jurisdiction of local educational, rather than health, authorities. Whatever may be the adminis-

trative conditions the general health laws and the regulations of the health department apply to schools, as they do to all other persons and things in the community. In cases of emergency or threatened danger to the public health the schools may be closed by order of the health authorities. In such an exigency a teacher is, as a rule, entitled to her compensation during the period when the school is closed. School authorities may properly require physical examinations of pupils, under authority from State law.

Reasonable requirements for the vaccination of pupils may be imposed by health or school boards. There is, however, some conflict in the court decisions as to how far such requirements may go, though all seem agreed that in the presence of an actual or threatened emergency, pupils may be required to be vaccinated or excluded from school, especially if there is legislation permitting such action. In the absence of legislation or when there is no emergency, the amount of power which can be assumed differs in the various States and must be ascertained in each case. There is no good legal reason why vaccination should not be required as a prerequisite to the privilege of school attendance.

Control of communicable diseases

Since the prevention and control of diseases communicated from man to man, or from animal to man, is one of the principal reasons for the existence of health organization, the courts have uniformly upheld reasonable State laws and local regulations concerned with this subject and also their proper enforcement. The actual administrative control, consisting of recognition, reporting, isolation and quarantine, immunization, disinfection, and various other measures dealing with the infected individual or carriers of the disease, the environment, and the public as a whole, are delegated to local health authorities, as being the ones most directly interested in the circumstances. During severe epidemics, or when a situation gets beyond local control, or involves

more than one community, it is proper for the State officers to intervene. Federal health officers may go into a State only on invitation or when interstate or foreign commerce is involved. Compulsory notification of disease, limitation of the movements of those dangerous to others, removal to hospitals, and control of healthy carriers of disease, are all measures which have been upheld by the courts when exercised in a reasonable manner for the benefit of the people as a whole.

Social hygiene

The control of the venereal diseases involves certain special considerations, due to the fact that many social factors are concerned in their spread. The American plan of control takes into consideration medical, educational, recreational, protective social, and legal measures. Adequate legislation to these ends, as well as efficient law enforcement are necessary. Reporting of the venereal diseases, examination of those reasonably suspected of being infected, compulsory quarantine of cases, and control of the infected are proper public health measures, while adequate and practical vice repressive laws dealing with the repression of prostitution, effective detention and probation machinery, and cooperation between the police, district attorneys, the courts, and civic and social agencies in law enforcement are other necessary community measures.

Sanitation of the environment

Sanitation of the environment is of considerable importance in public health work, and there is much public health law based upon it. Provision for purity and potability of public water supplies, the safe and inoffensive disposal of sewage and other waste products, supervision over milk and other food supplies, prevention of the spread of disease by animals and insects, control of insanitary dwellings, zoning, industrial hygiene and safety, and sanitation in general are

examples of these environmental matters which affect health and so are proper subjects for regulation and action by health authorities. Nuisances other than those belonging in these categories are, in general, of minor importance to health. A public health nuisance is one which is actually hazardous or detrimental to the health and physical welfare of a considerable number of persons. A private nuisance may, of course, also affect the health of the individual injured or damaged by it. There may be and are other conditions which annoy, offend, or affect the comfort of the people. These may be public nuisances, but they are not public health nuisances unless health is really jeopardized. Some things are always nuisances, as, for instance, flies, rats, houses of prostitution, and carriers of communicable disease. Others may or may not be, according to the circumstances.

Food regulations are commonly adopted and enforced by local authorities and it is seldom that the courts have held them invalid. With regard to milk control the courts have been practically unanimous in upholding all reasonable requirements and most liberal from the standpoint of health work in their interpretation of what is a reasonable regulation. Stream pollution, which is an unnatural use of a stream, may be prohibited, though often this is usually a matter for State rather than local jurisdiction. Control of fecal pollution within communities, as by debarring the use of insanitary privies, is a proper action on the part of local health authorities, as are also measures having to do with insect control.

HEALTH OFFICERS

The need for better equipment and broader vision

Any public office is a public trust, conferred on the holder for the benefit of society. A health officer is not only the person who enforces the sanitary laws of a State or community, but is also the guardian of the health of the people,

and as such should be specially trained in the modern profession of public health. He should receive a compensation commensurate with the responsibilities of his office and with his training and experience. He should be required to devote full time to his duties and his tenure of office should be secured and free from political influence. He should be appointed for merit, preferably by a non-partisan board or council, and should not necessarily be required to be a resident, nor a doctor of medicine, provided he is a graduate from a reputable school of public health or otherwise suitably trained and experienced in public health. These are conditions as they should be by law, but they seldom are so ideal, and actual provisions which govern the selection, appointment, term, and salary of health officers must be ascertained from the laws of each State.

Duties of the health officer

The duties of a health officer are likewise often specified by law. As the agent and executive of the health department, his powers should be broad, but must, of course, always be exercised in a reasonable manner. He should have authority to employ subordinates and to make necessary contracts for the department. As much discretion as possible in the conduct of the health work of the community should be granted to him.

The health officer's liability

Health officers are not personally liable, in the absence of a statute to the contrary, for any reasonable act for the promotion or protection of the public health. They can not be held liable in damages for mistakes or errors in judgment in the performance of acts within the scope of their authority, if there is no malice, corruption, or statutory provision imposing such liability. For arbitrary, oppressive, or unreasonable acts, however, or acts patently beyond the scope of their proper authority, they may be held individually

responsible for injuries caused. They are not liable for the faults or negligence of their subordinates which cause harm, unless such acts are due to their connivance as superiors.

The responsibility of the municipality for the acts of the health officer

The functions of a municipal corporation are either governmental, that is public duties, such as the care of the health of the people; or corporate, that is, concerned with business or proprietary duties, such as the maintenance of highways. The municipality is not liable for the acts of its officers in carrying out governmental functions, no matter how unreasonable such actions may be, or how much damage they cause. The officer in such circumstances may be liable, but never the municipality. The municipality is liable for injuries caused by its agents in performing corporate duties. The municipality may also be restrained from maintaining a nuisance in the course of its proprietary functions.

Civil liability and health

Physicians and individuals, the latter term including private corporations, are civilly liable for causing or permitting the spread of disease. A person who sells food impliedly warrants it to be fit for human consumption and if it is not and produces illness, the vendor is liable, as is also the manufacturer, in most jurisdictions.

HEALTH LAWS AND THEIR ENFORCEMENT

Two of the essential features of efficient public health administration are (1) the presence of scientifically drafted, practical health legislation, and (2) the effective enforcement of such legislation when the occasion demands.

Legislation and its drafting

When new or better health legislation is desired, obviously the first step is to ascertain what are the existing laws which apply. These may be found in the official codes, compiled statutes, or general statutes, and the session laws issued since these compilations. Wherever possible it is best to amend existing law. Technical assistance is essential in the drafting of any law and the theoretically ideal system for writing health laws would be to have them outlined first by a trained scientist, then revised by a professor of English, next gone over by a lawyer, and then rewritten by all three in conference. Many States have legislative drafting services, which can be of assistance, as may also the office of the Attorney General of the State. The requisites of proper drafting have been previously set forth in detail, but it may be reiterated that any law should conform to constitutional requirements, be adequate for its purpose, coördinated with existing law, and as simple and direct in form as is possible and consistent with certainty. Health laws must also be reasonable. In general, they will be liberally construed by the courts.

Remedies by and against health authorities

No law, ordinance or regulation should be promulgated unless it is intended to be enforced. Laws are put into operation by the executive branch of government, but are interpreted and applied in the interests of justice by the courts whenever a cause of action involving the law is properly brought before them. It is unnecessary in this review to outline again the scope and jurisdiction of the various courts, as that subject is adequately covered in Chapter XIV. The essential fact for sanitarians to remember in bringing action in the courts is to have a thoroughly prepared case, capable if possible, of irrefutable proof. In a criminal action the accused must be proven guilty be-

yond a reasonable doubt, though in a civil case the weight of evidence in favor of one side or the other should determine the outcome. Health officials may sometimes act in a summary manner when quick action is imperative for the welfare of the public, but the person who has been deprived of liberty or property is later entitled to his day in court. Whether he can recover or not is a matter to be decided on its merits. Besides summary action, health officers may proceed against offenders by taking them to court and getting fines imposed, if the case is proved, or by securing an injunction in a court of equity to restrain the act dangerous to public health, and there are also other remedies applicable to various conditions.

Individuals have remedies against health officials whom they believe to have acted oppressively or illegally, by suing out writs of mandamus to compel official action, certiorari to question official action, quo warranto to question the right to office, or they may sue in damages for injuries inflicted on themselves or their property. Any person whose liberty is restrained may invoke the writ of habeas corpus to have a court determine whether he is rightfully or wrongfully detained. Injunction may also be used against health authorities in a limited number of cases, and there may be other remedies.

HEALTH THE BASIS OF CIVILIZATION

"Public health," wrote Benjamin Disraeli a half century ago, "is the foundation on which reposes the happiness of the people and the power of a country. The care of the public health is the first duty of a statesman." Health is one of the most important things in life. "Give me health and a day," wrote Ralph Waldo Emerson, "and I will make the pomp of emperors ridiculous." Because health is recognized by all thinking people to be among the first essentials in life, no one can deny that it is the duty, the right, and the privilege, of any sovereign power, as exem-

plified in the State, to employ all reasonable methods for its advancement, to the end that the vitality and thereby the happiness and welfare of the people may be promoted and enhanced. Public health law, like all law, is based on reason and on justice for all. In its operation it should seek only to safeguard the citizenry as a whole and the States and Nation of which they form a part, without oppression, without discrimination, and with a due regard for those sacred rights of personal liberty and freedom of thought and action which are the keystones of our modern American civilization. As the health of the people is advanced, so too does that civilization make progress.

"The quest for health is more alluring than the search for any of the world's treasures, for that which is sought is Life itself."

APPENDIX I

The Constitution of the United States of America

In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts,

and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788, Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790 that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, on convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."

PREAMBLE

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I

LEGISLATIVE DEPARTMENT

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. [1]The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[2] No person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the

United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3] *[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]

* (The part included in heavy brackets is amended by Sec. 2 of amendment XIV, page 256.)

The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

(Note: The last apportionment, under the act of 1911, was made on the basis of one Representative for 211,877 of population, and one for each major fraction thereof.)

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

[1] SECTION 3. [* The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]

* (The part included in heavy brackets is amended by Amendment XVII, page 257.)

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any

State, the Executive thereof may make temporary Appointments* [until the next Meeting of the Legislature, which shall then fill such Vacancies.]

* (The parts included in heavy brackets is amended by Amendment XVII, page 257.)

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

SECTION 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. [1] Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two third, expel a Member.

[3] Each House shall keep a Journal of its Proceedings, and from time to

time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United

States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power [1] To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places

purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2] The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3] No Bill of Attainder or ex post facto Law shall be passed.

*[4] No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

* (See also the sixteenth amendment, page 257.)

[5] No Tax or Duty shall be laid on Articles exported from any State.

[6] No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State be obliged to enter, clear, or pay Duties in another.

[7] No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use

of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

[3] No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

Executive Department

Section 1. [1]The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows:

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

*[The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]

* (This paragraph has been superseded by Amendment XII, pages 255–256.)

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4] No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice-President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the State of Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

JUDICIAL DEPARTMENT

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

SECTION 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;— to all Cases affecting Ambassadors, other public Ministers and Consuls;— to all Cases of admiralty and maritime Jurisdiction;— to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;— between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3] The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. [1] Treason against the United States, shall consist only in levying War against them, or, in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2] The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

RELATIONS OF STATES

SECTION 1. Full Faith and Credit shall be given in each State of the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

Amendment

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

ARTICLE VI

National Debts: Supremacy of National Law: Oaths

[1] All Debts contracted and Engagements entered into, before the Adoption of the Constitution, shall be as valid against the United States under the Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

Establishment

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thou-

sand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. **In Witness** whereof We have hereunto subscribed our Names,

G°. WASHINGTON
Presidt and deputy from Virginia

New Hampshire

JOHN LANGDON — NICHOLAS GILMAN

Massachusetts

NATHANIEL GORHAM — RUFUS KING

Connecticut

WM SAML JOHNSON — ROGER SHERMAN

New York

ALEXANDER HAMILTON

New Jersey

WIL: LIVINGSTON — WM PATTERSON
DAVID BREARLEY. — JONA: DAYTON

Pennsylvania

B. FRANKLIN — THOMAS MIFFLIN
ROBT. MORRIS — GEO. CLYMER
THOS. FITZSIMONS — JARED INGERSOLL
JAMES WILSON — GOUV MORRIS

Delaware

GEO: READ — GUNNING BEDFORD jun
JOHN DICKINSON — RICHARD BASSETT
JACO: BROOM

Maryland

JAMES MCHENRY — DAN: of ST. THOS JENIFER
DANL CARROLL

Virginia

JOHN BLAIR— — JAMES MADISON JR.

North Carolina

WM BLOUNT RICHD DOBBS SPAIGHT,
HU WILLIAMSON

South Carolina

J. RUTLEDGE CHARLES COTESWORTH PINCKNEY
CHARLES PINCKNEY PIERCE BUTLER.

Georgia

WILLIAM FEW ABR BALDWIN

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION

The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparge others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT XII*

* (See page 247.)

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum

for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT XIII*

* (See page 250.)

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV*

* (See page 254.)

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive

or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude—

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT XVII*

* (See page 243.)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

[2] When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vancancies by election as the legislature may direct.

[3] This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT XVIII

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

APPENDIX II

Health Provisions for State Laws Relating to Children

A committee[1] of the National Child Health Council met in 1921 and drafted a report on "Health Provisions for State Laws Relating to Children," in which suggestions are made as to the health matters which should be considered by Children's Code Commissions and other interested parties in formulating State laws relating to children. In the years since the issuance of this report, it has been widely utilized and has been of much service to State authorities and others concerned with this subject. The author believes that a copy of this valuable report should be presented in this book. It is, therefore, given as follows:[2]

OUTLINE OF SUGGESTED HEALTH PROVISIONS

Inasmuch as health is of paramount importance to child life and as it has often received minor consideration in State Children's Codes, the Committee on Health Provisions for Laws Relating to Children wishes to emphasize the need for adequate treatment of this subject by all States. The following are points which should be borne in mind.

PRE-NATAL CARE

1. State Children's Code Commissions should recommend the removal of all legislative restrictions which prevent proper and complete measures for pre-natal and maternity care, and the granting of positive legislative authority for undertaking and promoting such measures. (Note: Examples of legislative restrictions that should be removed are such limitations as to tax rates or levies as make it impossible to provide adequate appropriations for the care of the health of mothers and children. Also in some States local authorities are not permitted to undertake

[1] Members of this committee were:—Courtenay Dinwiddie, Chairman; R. A. Bolt, M.D.; E. Dana Caulkins; Taliaferro Clark, M.D.; E. N. Clopper; Anna E. Rude, M.D.; W. S. Small, Ph.D.; and James A. Tobey, Secretary.

[2] Reprinted from Mother and Child, February, 1921. This report also appeared in numerous other public health and medical magazines about the same time.

certain important measures unless these are specifically authorized by statute. Such general legislative restrictions which prevent necessary health measures are apt to be overlooked in drafting health and welfare legislation.) Facilities for the education of expectant mothers, for the establishment of pre-natal health centers and clinics, for the protection of expectant mothers in industry, and for the health supervision of mothers, should be definitely authorized by law.

CARE AT BIRTH

1. Midwives

State laws should require that all midwives be licensed by the State Health Department for the purpose of permitting only those who are properly qualified, to practice midwifery, and that adequate provision be made for proper supervision by State or local health authorities of all such midwives, to see that they observe all regulations, subject to revocation of their licenses. Educational training for obstetrical attendants and midwives should be authorized only where the facilities for training are adequate and there is proper educational and health supervision.

2. Control of ophthalmia neonatorum ("babies' sore eyes")

Every State Health Department should be specifically authorized by law to require the immediate reporting of all inflammatory conditions of the eyes of the new born, to require treatment of the eyes of the new born at birth and to furnish the prophylactic for this purpose for the prevention of blindness. (Note: Experience has shown that the law should describe this disease rather than simply refer to it by its technical names.)

3. Vital statistics

The law should require the prompt reporting of births by the professional attendant to local registrars of vital statistics not later than three (3) days after birth. Registrars should be under the health department. Legislation requiring the reporting of still births is important.

4. Supervision of maternity homes

All institutions in which mothers are given care during or near confinement should be licensed subject to the periodic inspection and approval of health authorities.

INFANT AND PRESCHOOL CARE

1. Legislative restrictions should be removed and definite legislative authority granted so that adequate facilities for protecting and pro-

moting the health of infants from birth to the beginning of school age can be provided by State and local authorities. (Note: the type of legislation necessary for this purpose with reference to babies, preschool children and mothers is indicated under the paragraph which deals with the pre-natal period.)

2. Control of milk and milk products

There should be legislation requiring the general pasteurization of uncertified milk, the supervision of such pasteurization, and such other regulation and supervision of the production, handling and preservation of milk and milk products as will insure a safe supply.

CARE OF CHILDREN IN SCHOOL[3]

1. Health education

There should be legislation providing for the instruction and training of all children of school age, for the purpose of developing health habits through supervised physical activities, free play, and practical instruction in hygiene, including personal hygiene, nutrition and sanitation.

Adequate provision should be made for the promotion of health education by the states in coöperation with local communities.

Provision should be made for the instruction and training of all teachers in the fundamental principles of health education.

(Note: Such legislation should allow scope for the development of initiative, spontaneity and responsibility on the part of the child. Rigid and uniform courses of physical drill or of hygienic instruction should not be prescribed, but rather there should be the normal stimulation of the child's physical development and the inter-weaving of health education into all the many subjects of which it naturally forms a part.)

2. Physical examinations and health supervision

There should be State legislation making it possible for counties, municipalities and townships to provide facilities for periodic physical examinations and for promoting the health of school children. The appropriate State authorities should be authorized to promote the development of such facilities. (Note: The type of legislation necessary

[3] In connection with school hygiene, Chapter V of A Manual of Educational Legislation (Bulletin 1924, No. 36) of the U. S. Bureau of Education, Washington, D. C., also suggests matters which ought to be covered by State laws.

for this purpose s indicated under the paragraph dealing with pre-natal care.)

It should be required that the health supervision of school children be closely correlated with the health supervision of babies and preschool children.

3. Special health classes

Legislation should authorize facilities for the training and instruction of special groups which, by reason of disabilities, are unable to receive adequate education and health supervision in the regular classes.

4. Sanitation of school houses and their environment

School buildings, school grounds and accessories should be regularly inspected and supervised as to sanitary conditions, subject to the regulations and jurisdiction of the health authorities.

CHILDREN IN INDUSTRY

1. Physical supervision and health education

As long as a child is of school age he should receive health education and supervision. (Note: Experience shows that the continuation school offers an effective medium of health education and supervision.) Physical examinations should be given when he leaves school to go to work, at each change of occupation, and periodically thereafter while he is of school age.

GENERAL

1. Administration

In each State there should be a bureau of child hygiene. The administration of all legislative provisions affecting the health of children, except those which properly pertain to other State agencies, should be vested in this bureau. The work of such other agencies and that of the bureau of child hygiene should be properly coördinated.

2. Control of institutions and agencies

All public and private institutions, agencies, courts and boarding homes caring for dependent, defective or delinquent children should be required by law to have adequate health supervision over their work and wards, subject to the regulations of the health authorities.

All measures dealing with the appropriation and expenditure of funds for material relief in connection with child or maternity care should specifically make provision for adequate eare of the health.[4]

[4] The report also gives a list of useful references to child health and child welfare legislation, but as all of these references have been cited in various parts of this book, the list is omitted here.

APPENDIX III

Use of the References[1]

Limitations of space in a book of this nature do not permit of a complete exposition of every point involved in public health law. There are, accordingly, many references to authorities where more complete information on particular subjects may be obtained. These references are of considerable value and should be freely consulted by readers who desire to study more intensively any of the various phases of the legal side of sanitary science. An endeavor has been made to select these references carefully and with due regard to accuracy, authenticity, reliability, and modernity. They may be said, in fact, to be one of the features of the book.

LEGAL REFERENCES IN GENERAL

Legal references may be divided into two classes; those of primary authority, and those of secondary authority. In the former division are constitutions, statutes, and the decisions of courts of final appeal, these latter forming, as explained in Chapter I, a part of the unwritten or common law. References of secondary influence include text books, encyclopedias, articles, and the obiter dicta, or collateral and not material opinions of judges. Sometimes a text book which has been written by a great lawyer, a work which has stood the test of time and has been frequently cited by the courts, may be included among the references of primary authority, though such instances are rare. Examples are the Commentaries of Blackstone and of Kent and such books as Dillon's great work on Municipal Corporations. Text books and encyclopedias are, generally speaking, restatements of the law, as deduced from the opinions of the courts, with an occasional discussion of certain points by the author of the book.

COURT DECISIONS

Decisions of courts of appeal are of primary importance in that they lay down the broad principles of law which are applicable to a given

[1] See Hicks, F. C.: Materials and Methods of Legal Research (1923); and also Cooley, R. W.: Brief Making and the Use of Law Books (4th Ed., 1924).

set of facts. By the doctrine of *stare decisis*[2] (literally, "let the decision stand") a court decision becomes a precedent and will, as a general proposition, be followed by subsequent decisions of the courts of the same State. Thus, an early case decided in Illinois in 1897 held that vaccination could not be required as a condition precedent to attendance at school, except in emergencies, and three subsequent cases, decided in 1899, 1908, and 1924[3] have followed this same rule. Since there are forty-eight State courts of last resort, as well as federal and territorial courts of appeals, it is natural that there is some conflict in the decisions on various matters, for each State is sovereign unto itself within the limitations of the Federal Constitution. This divergence of viewpoints is exemplified in the matter of the vaccination decisions, as outlined and listed in Chapter VI. The opinions of a particular court of last resort are binding only upon the courts in that State in which they are delivered, but may have some weight in other States, and may be followed if no similar situation has arisen resulting in a different adjudication within the State.

In this book there are cited over 400 court decisions, practically all from the courts of last resort of the several States and the Federal government. A decision of a court of intermediate appeal may also be of value, especially if it has not been carried beyond that court, or if it has been affirmed by a higher one. All of the court decisions in this volume have been actually looked up and are cited because they apply to the point under discussion. A reader who is interested in a particular proposition and who wishes to utilize the information given and the cases referred to should always read the decision in full, however, and not take it for granted that it applies exactly as stated.

References to the places where the court decisions may be found reported have been made as complete as possible, in most instances several citations being given. Thus, if a health officer or attorney has access to one set of law reports and not to another, by having references to both he may consult readily that which he does have at hand. For instance:

Blue v. Beach (1900), 155 Ind. 121, 56 N. E. 89, 80 Am. S. R. 195, 50 L. R. A. 64.

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[2] "A solemn decision upon a point of law, arising in any given case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it be shown that the law was misunderstood or misapplied in that particular case" Kent's Commentaries, 475.

[3] See page 94.

means that this case, decided in 1900, may be found in volume 155 of the Indiana State Reports at page 121, in volume 56 of the Northeastern Reporter at page 89, in volume 80 of the American State Reports at page 195, and in volume 50 of the Lawyers Reports Annotated at page 64. Every State has its official volume of court decisions in which practically all its opinions are given. In addition, there is the National Reporter system, which covers the entire country with a series of reporters known as the Atlantic, Pacific, Northeastern, Northwestern, Southern, Southeastern, Southwestern, and Federal. Prior to 1919 there were also a number of other independent State reports, but these have now been consolidated in the American Law Reports Annotated which give selected ruling cases, with notes and valuable discussions. As will be noted in the references, the various reporters are cited by their initials, as 10 A. L. R. 40, etc. If only one reference is given with a court decision, it means either that it may be found in only that one reporter or that the author, for various reasons, was unable to locate other citations.

The dates of all cases are given for convenience. This is useful information, in that it shows its modernity as an authority, but it should be remembered that age is not necessarily a criterion of the value or weight of a court decision. A principle of law decided in 1847 may be just as sound today as it was then and may still be followed as the authority. On the other hand, a decision in 1874[4] to the effect that an order by a health officer requiring the removal of the wall paper from a room occupied by a smallpox patient was a reasonable exercise of authority, might be seriously questioned today in the light of the modern conception of the unimportance of possibility from fomites-borne infections. Later cases are sometimes especially valuable in that they summarize and discuss all the previous decisions and deduce the modern line of reasoning to be followed. This is, perhaps, particularly true of court decisions pertaining to public health. Courts have sometimes been accused by laymen of not keeping abreast of modern scientific developments. This may be true to a partial degree, but it can be stated as a general proposition that the courts do give cognizance to recognized progress in scientific attainment and modify their principles and precedents to fit these modern conditions.

The court decisions cited in this book are, therefore, of much value as reference material. Some of them are excellent essays on public health procedure. Unfortunately, it has not been possible to cite every case applicable to public health law and there are probably about three times as many in the aggregate as it has been feasible to mention. It

[4] Beavey v. Preble, 64 Me. 10.

will be noted that there occasionally occur in this book references to places where additional cases may be found cited, as, for instance:

"12 Ruling Case Law 1271, and cases cited there," or "12 Corpus Juris 904, and cases cited there."

Such references are to enclyclopedias of law, legal digests, annotated reporters, text books, or articles, where other cases may be found listed. In connection with the volumes of State reporters there is usually a digest, arranged according to subjects. By consulting this digest under appropriate headings, such as "Health," "Food," "Municipal Corporations" and the like, all the cases applicable up to the date of publication of the digest may as a rule be found. Of national scope in a similar capacity is the American Digest system, which attempts to list and abstract all the American court decisions under appropriate subjects. There is a section on "Health" and there are also many other sections where decisions applicable to some phase of public health may be found.

One final point should be remembered with regard to court decisions as references. That is that sometimes a later case may overrule a former one, though this is by no means a usual occurrence. The Legislature may also upset a principle of law laid down by a court, by passing a statute directly contrary to it. This may be done by the Legislature provided no constitutional question is involved. Thus, a court may hold that under existing law, health authorities have exceeded their powers by requiring, let us say as a hypothetical case, purification of water supplies for human consumption. The Legislature may then determine as a matter of fact that such purification is essential to the public health and may therefore by statute specifically empower health officers to deal with the situation.

The court decisions cited in this volume were, so far as we know, all of good authority at the time of going to press.

BOOKS AND ARTICLES

Two types of references to books and articles are given in this book. One is concerned with legal material and the other with matters dealing with hygiene and sanitation. Nearly 200 such references will be found, of which about a third are to legal subjects, another third to public health ones, and the remainder deal with public health law itelf. All have been carefully selected from the best modern thought on the subjects under discussion. As a matter of convenience, most of these references carry dates of publication. The date of a text book or article is often important, as the more recent it is, the more up-to-date and valuable it is likely to be. This rule varies, of course, according to the type of material and other factors.

Persons who wish to investigate a particular subject beyond the scope of this book will find these references of value. A jurist or attorney, for instance, who is interested in a legal problem revolving about an alleged nuisance would find it worth while to familiarize himself with the latest trend of sanitary science as to the importance of nuisances and this he could ascertain by perusal of Chapin's excellent article on this topic, as cited on page 121[5] and by consulting other references to the subject. A health official might wish to go more thoroughly into the legal powers and limitations of public officers, a matter which he will find discussed in detail in the text book by Mechem, referred to on page 172, also in Dillon on Municipal Corporations, cited on page 172 and Goodnow on Administrative Law (page 172). So, too, an official might wish to ascertain some of the provisions of State laws on public health nursing, a subject which it has not been possible to develop in great detail in this book. A reference to a reprint of this subject, which gives abstracts of all such laws up to its date of issue will be found in the chapters on State Health Departments, and Special Powers of Health Departments under the section on school hygiene.

In mentioning text books, an endeavor has been made not only to list those which are considered among the best works, but also those standard treatises which are readily available.

[5] Nuisance Prevention a Hindrance to Disease Prevention, American Journal of Public Health, January, 1924.

APPENDIX IV

Selected Bibliography

As has been stated elsewhere, one of the objects of this book is to serve as a guide to sources of important and more intensive information on the legal aspects of public health. In pursuance of this endeavor, the following selected bibliography is appended. It contains citations to most of the references given in the body of the book and also to a few additional ones of value. For convenience and utility, these references are arranged by subjects, rather than by authors. They are divided into three groups: A, those pertaining to public health; B, those dealing with law; and C, those having to do with public health law.

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American Public Health Association, 370 Seventh Avenue, New York. Appraisal Form for City Health Work (March, 1925). This is an experimental form for rating municipal health activities. It was planned to revise it after the experience of a year's use.

Chapin, C. V. Report on State Public Health Work. (1914). American Medical Association, Chicago, Ill. This valuable report is now out of print, but may be consulted in libraries.

Luckett, G. S. and Gray, H. F. Elements of Public Health Administration. (1923). Blakiston.

MacNutt, J. S. Manual for Health Officers. (1916). Wiley.

Overton, F. and Denno, W. J. The Health Officer (1920). Saunders.

[1] More complete bibliographies on various phases of hygiene, sanitation, and public health may be obtained from the National Health Library, 370 Seventh Avenue, New York, N. Y. The list given here is not intended to be all inclusive. This list has been checked and corrected by Miss Mary Casamajor, Librarian of the National Health Library.

Organization, Powers, and Duties of Health Authorities. Public Health Bulletin No. 54. (1912). U. S. Public Health Service, Washington, D. C. Although the data is now out of date, this is a valuable pamphlet on general administration.

Whipple, G. C. State Sanitation. 3 vols. (1917). Harvard University Press. Although chiefly an historical account of public health administration in Massachusetts, volume 1 of this series has some very able discussions on State public health procedure.

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See also General.

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